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FEDERAL REGISTER

VOLUME 25 NUMBER 71

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FEDERAL REGISTER

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Title 3—THE PRESIDENT

Executive Order 10873

DESIGNATING THE INTER-AMERICAN DEVELOPMENT BANK AS A PUBLIC INTERNATIONAL ORGANIZATION ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act, approved December 29, 1945 (59 Stat. 669), and having found that the United States participates in the Inter-American Development Bank under the authority of an act of Congress approved August 7, 1959 (73 Stat. 299), I hereby designate the Inter-American Development Bank as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

The designation of the Inter-American Development Bank as a public international organization within the meaning of the International Organizations Immunities Act shall not be deemed to abridge in any respect privileges, exemptions, and immunities which that organization may have acquired or may acquire by treaty or congressional action.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
April 8, 1960.

[F.R. Doc. 60-3352; Filed, Apr. 8, 1960; 3:38 p.m.]

Rules and Regulations

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Docket 3666; Order 42]

PARTS 71–78—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Miscellaneous Amendments

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 23d day of March 1960.

The matter of revision of certain regulations governing the transportation of explosives and other dangerous articles, formulated and published by the Commission, being under consideration, and

It appearing that Notice No. 42, dated February 11, 1960, setting forth certain proposed amendments to the said regulations, and the reasons therefor, and stating that consideration was to be given thereto, was published in the FEDERAL REGISTER on February 16, 1960 (25 F.R. 1364), pursuant to the provisions of section 4 of the Administrative Procedure Act; that pursuant to said notice interested parties were given an opportunity to be heard with respect to said proposed amendments; that written views or arguments were submitted to the Commission with respect to the proposed amendments;

And it further appearing that said views and arguments with respect to the proposed amendments are such as to warrant revision at this time of certain of the proposed amendments, and that in all other respects the proposed amendments set forth in the above referred-to Notice No. 42 are deemed justified and necessary:

It is ordered, That the aforesaid regulations governing the transportation of explosives and other dangerous articles be, and they are hereby, amended in the manner and to the extent set forth in Appendix A attached to said Notice No. 42, dated February 11, 1960, as revised by the specific deletion, addition and modifications set forth as follows:

1. Revise the amendatory text to § 73.31 and delete the proposed amendment of paragraph (j) as follows: "In § 73.31 amend paragraph (g) (8); amend paragraph (g) (9) Table 3 and add Footnote d thereto (21 F.R. 4562, 4563, June 26, 1956) to read as follows:".
2. In § 73.100 amend paragraph (b).
3. In § 73.148 add paragraph (a) (5).
4. In § 73.154 amend paragraph (a) (13).
5. In § 73.163 amend paragraph (a) (8).
6. In § 73.164 amend paragraph (a) (4).
7. In § 73.347 amend paragraph (a) (8).
8. In § 78.261 amend paragraph (j).
9. In § 78.290–18 amend paragraph (a) (8).

It is further ordered, That this order shall become effective June 20, 1960, and shall remain in effect until further order of the Commission;

It is further ordered, That compliance with the herein prescribed and amended regulations is hereby authorized on and after the date of service of this order;

And it is further ordered, That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

(62 Stat. 738, 18 U.S.C. 831–835; 49 Stat. 546, 52 Stat. 1237, 54 Stat. 921, 49 U.S.C. 304)

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY, *Secretary.*

PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71–78 OF THIS CHAPTER

Amend § 72.5 Commodity List (23 F.R. 7645, Oct. 3, 1958) (20 F.R. 4413, June 23, 1955) (15 F.R. 8265, 8267, 8268, and 8272, Dec. 2, 1950) as follows:

§ 72.5 List of explosives and other dangerous articles.

(a) * * *

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
Change				
Explosive power device, class C	Expl. C	No exemption, 73.102.		150 pounds.
*Resin solution (*resin compound, liquid*)	F.L	73.118, 73.119	Red	55 gallons.
Add				
Explosive power device, class B	Expl. B	No exemption, 73.94	Red#	150 pounds.
Chlorine dioxide hydrate, frozen	Oxy. M	No exemption, 73.237.	Yellow	Not accepted.
Fuse, mild detonating, metal clad. *See* Mild detonating fuse, metal clad.				
Hexafluoropropylene	Nonf. G	73.302, 73.306, 73.314	Green	300 pounds.
Monoethylamine	F.L	73.118, 73.148	Red	10 gallons.
Tank cars, empty (last contents hydrocyanic acid).	See § 74.562 (d).			

PART 73—SHIPPERS

Subpart A—Preparation of Articles for Transportation by Carriers by Rail Freight, Rail Express, Highway, or Water

1. In § 73.28 amend paragraph (h) (24 F.R. 3595, May 5, 1959) to read as follows:

§ 73.28 Reused containers.

* * * * *

(h) Single-trip containers made under specifications prescribed in Part 78 of this chapter from which contents have once been removed following use for shipment of any article, must not be again used as shipping containers for explosives, flammable liquids, flammable solids, oxidizing materials, corrosive liquids, or poisons, class B or C, as defined in this part: *Provided,* That during the present emergency and until further order of the Commission, single-trip containers may be reused if retested in accordance with methods approved by the Bureau of Explosives before each reuse and approved for service for specific commodities or classes of commodities. Applications for permission for reuse should be made to the Bureau of Explosives, 63 Vesey Street, New York 7, N.Y.

2. In § 73.31 amend paragraph (g) (8); amend paragraph (g) (9) Table 3 and add Footnote d thereto; (21 F.R. 4562, 4563, June 26, 1956) to read as follows:

§ 73.31 Qualification, maintenance, and use of tank cars.

* * * * *

(g) * * *

(8) Retests of all tanks and safety valves must be certified by party making tests to owners of tank cars. Certifications must show initials and numbers of cars, pressure to which tested, date of test, place of test, and by whom test is made.

(9) * * *

TABLE 3—(AAR CLASSIFICATIONS) RETEST PERIODS AND PRESSURES

Classification	Tank retests				Safety valve retest (years)	Interior heater systems retest				Tank test (p.s.i.)	Safety valve (p.s.i.[b])	Safety valve vapor tight p.s.i. (minutes)	Retest holding time (minutes)	Test time when lagging is not removed (minutes)
	Up to 10 years	10 to 22 years	Over 10 years	Over 22 years		Up to 10 years	10 to 22 years	Over 10 years	Over 22 years					
Add														
AAR-204-W[d]														

[d]Auxiliary safety devices to be retested every five years.

* * * * *

(j) When tank cars are loaded and shipped, the shipper must determine to the extent practicable, that the tank and the safety appurtenances and fittings are in proper condition for the safe transportation of the lading. Tanks with bottom discharge outlets must have their outlet caps off, or outlet cap plugs open, during the entire time tanks are being loaded and after loading. Tanks with bottom outlet valves which permit more than a dropping of the liquid with the outlet caps off, or outlet cap plugs open, must not be offered for transportation until proper repairs have been made. Tanks which show any dropping or leaking of liquid contents at seams or rivets must not be offered for transportation until proper repairs have been made.

Subpart B—Explosives; Definitions and Preparation

1. In § 73.51 amend paragraph (q) (23 F.R. 7646, Oct. 3, 1958) to read as follows:

§ 73.51 Forbidden explosives.

* * * * *

(q) New explosives except samples for laboratory examination (see § 73.86) and military explosives approved by the Chief of Ordnance, Department of the Army; Chief, Bureau of Naval Weapons, Department of the Navy; or Commander, Air Materiel Command, Department of the Air Force. All other new explosives must be approved for transportation by the Bureau of Explosives.

2. In § 73.56 add paragraph (c) (1) (15 F.R. 8286, Dec. 2, 1950) to read as follows:

§ 73.56 Ammunition, projectiles, grenades, bombs, mines, and torpedoes.

* * * * *

(c) * * *

(1) Explosive projectiles less than 4½ inches in diameter may be shipped without being boxed, when palletized, only by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government when securely blocked and braced in accordance with methods approved by the Bureau of Explosives.

3. In § 73.60 amend paragraph (b) (2) (20 F.R. 8099, Oct. 28, 1955) to read as follows:

§ 73.60 Black powder and low explosives.

* * * * *

(b) * * *

(2) Spec. 12H, 23F, or 23H (§§ 78.209, 78.214, or 78.219 of this chapter). Fiberboard boxes with inside containers which must be cloth, paper, or securely closed polyethylene bags constructed of material not less than 0.004 inch thick of capacity not exceeding 25 pounds net weight for cloth or paper bags and not exceeding 50 pounds net weight for polyethylene bags, or inside fiber or metal containers having not over 1 pound capacity each, provided the completed shipping package shall be capable of withstanding a drop of 4 feet without rupture of inner or outer containers. The tubes of the box may be eliminated and a single tube as specified in spec. 23F (§ 78.214 of this chapter) may be substituted. The completed package shall not contain more than 50 pounds net weight of black powder.

4. In § 73.73 amend paragraph (c) (15 F.R. 8291, Dec. 2, 1950) to read as follows:

§ 73.73 Lead azide.

* * * * *

(c) If shipment of lead azide is to take place at a time that freezing weather is to be anticipated, a mixture of denatured ethyl alcohol or other suitable antifreeze and water of such proportions that freezing will not occur in transit must be used.

5. In § 73.88 add paragraph (g) (15 F.R. 8293, Dec. 2, 1950) to read as follows:

§ 73.88 Definition of class B explosives.

* * * * *

(g) Explosive power devices, class B, are devices designed to operate ejecting apparatus or other mechanisms by means of a propellant explosive, class B, and differ from explosive power devices, class C, in that they contain larger or more powerful propellants. The devices must not rupture on functioning and must be of a type approved by the Bureau of Explosives, except as otherwise provided in §§ 73.51(q) and 73.86(a).

6. Add § 73.94 (17 F.R. 1561, Feb. 20, 1952) to read as follows:

§ 73.94 Explosive power devices, class B.

(a) Explosive power devices, class B, must not be shipped with igniters assembled therein unless shipped by, for, or to the Departments of the Army, Navy, and Air Force of the United States Government or unless of a type approved by the Bureau of Explosives. Explosive power devices, class B, must be packed in outside containers complying with the following specifications:

(1) Spec. 14, 15A, 15E, or 16A (§§ 78.165, 78.168, 78.172, or 78.185 of this chapter). Wooden boxes or wooden boxes, fiberboard lined.

(2) Strong wooden or metal boxes or containers. Authorized only for shipments made by, for, or to the Departments of the Army, Navy, or Air Force of the United States Government.

(b) Explosive power devices, class B, packed in any other manner must be in containers of a type approved by the Bureau of Explosives.

(c) Each outside container must be plainly marked "EXPLOSIVE POWER DEVICES, CLASS B" and "HANDLE CAREFULLY—KEEP FIRE AWAY."

7. In § 73.100 amend the introductory text of paragraph (b); amend paragraph (aa) (22 F.R. 3925, June 5, 1957) (23 F.R. 7647, Oct. 3, 1958) to read as follows:

§ 73.100 Definition of class C explosives.

* * * * *

(b) Small-arms ammunition is fixed ammunition consisting of a metallic, plastic composition, or paper cartridge case, a primer, and a propelling charge, with or without bullet, shot, tear gas material, tracer components, or incendiary compositions or mixtures, but not including bullets loaded with high explosives, and is further limited to the following:

* * * * *

(aa) Explosive power devices, class C, are devices designed to drive generators or mechanical apparatus by means of propellant explosives, class B. The devices consist of a housing with a contained propellant charge and an electric igniter or squib and shall contain not more than 400 grams of explosive composition. The devices must be of a design approved by the Bureau of Explosives.

8. In § 73.102 amend the heading and paragraphs (a) and (b) (23 F.R. 7647, Oct. 3, 1958) to read as follows:

§ 73.102 Explosive cable cutters, explosive power devices, class C, or explosive release devices.

(a) Explosive cable cutters, explosive power devices, class C, or explosive release devices must be packed in strong wooden or metal boxes.

(b) Each outside container must be plainly marked "EXPLOSIVE CABLE CUTTERS," "EXPLOSIVE POWER DEVICES, CLASS C," or "EXPLOSIVE RELEASE DEVICES" and "HANDLE CAREFULLY—KEEP FIRE AWAY."

Subpart C—Flammable Liquids; Definition and Preparation

1. In § 73.119 amend paragraph (a) (3) (15 F.R. 8298, Dec. 2, 1950) to read as follows:

§ 73.119 Flammable liquids not specifically provided for.

(a) * * *

(3) Spec. 17E (§ 78.116 of this chapter). Metal drums (single-trip) not over 5 gallons capacity, with openings not over 2.3 inches in diameter. (See also paragraph (a) (16) of this section.)

2. In § 73.121 amend paragraph (a) (2) (15 F.R. 8300, Dec. 2, 1950) to read as follows:

§ 73.121 Carbon bisulfide (disulfide).

(a) * * *

(2) Spec. 12A or 12B (§ 78.210 or 78.205 of this chapter). Fiberboard boxes with inside containers which must be glass or earthenware, not over 1 pint each, or metal cans, not over 1 quart each. Outside containers not to exceed 65 pounds gross weight.

3. In § 73.122 amend paragraph (a) (3) Note 1 (21 F.R. 9356, Nov. 30, 1956) to read as follows:

§ 73.122 Acrolein, inhibited.

(a) * * *

(3) * * *

NOTE 1: Spec. 105A500–W and 105A600–W (§§ 78.288 and 78.289 of this chapter) tank cars stenciled 105A200–W or 105A300–W (§§ 78.307, 78.286 of this chapter) may be used.

4. In § 73.125 amend paragraph (a) (3) and add paragraph (a) (7) (15 F.R. 8301, Dec. 2, 1950) to read as follows:

§ 73.125 Alcohol.

(a) * * *

(3) Spec. 12B (§ 78.205 of this chapter) fiberboard boxes. Because of the present emergency and until further order of the Commission, inside glass containers not over 1.21 gallons capacity each are authorized when only one inside container is packed in each outside container.

* * * * *

(7) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

5. Add § 73.148 (15 F.R. 8302, Dec. 2, 1950) to read as follows:

§ 73.148 Monoethylamine.

(a) Monoethylamine must be packed in specification containers as follows:

(1) Spec. 5 or 5A (§§ 78.80 or 78.81 of this chapter). Metal barrels or drums, with openings not exceeding 2.3 inches in diameter. Bung labels required as prescribed in § 73.119(i).

(2) Cylinders as prescribed for any compressed gas except acetylene.

(3) Tank cars prescribed in § 73.119(f) (3).

(4) Spec. 106A500, 106A500X, or 110A500–W (§§ 78.275 or 78.293 of this chapter). Tank cars.

(5) Spec. MC 304 (§ 78.325 of this chapter). Tank motor vehicle.

* * * * *

Subpart D—Flammable Solids and Oxidizing Materials; Definition and Preparation

1. In § 73.153 amend paragraph (b) and add paragraphs (b) (1), (2); add paragraph (c) (70) (24 F.R. 10110, Dec. 15, 1959) (15 F.R. 8303, Dec. 2, 1950) to read as follows:

§ 73.153 Exemptions for flammable solids and oxidizing materials.

* * * * *

(b) Liquid or solid organic peroxides, except acetyl benzoyl peroxide, solid, and benzoyl peroxide, are, unless otherwise provided, exempt from specification packaging, marking, and labeling requirements, when packed in accordance with the following subparagraphs of this paragraph, except that marking name of contents on outside container is required for shipments via carrier by water. Shipments for transportation by highway carriers are exempt also from Part 77 of this chapter except § 77.817, and Part 197 of this chapter.

(1) Strong outside containers having not over 1 pint or 1 pound net weight of the material in any one outside package with inside containers securely packed and cushioned with incombustible cushioning material.

(2) Strong outside containers having not more than 24 inside fiberboard containers each containing not more than 70 chemically resistant closed plastic tubes having fluid capacity not over ⅛ ounce each and securely packed in incombustible cushioning material. No one inside fiberboard container shall have more than 1 pint of liquid.

(c) * * *

(70) Chlorine dioxide hydrate, frozen.

2. In § 73.154 add paragraphs (a) (12) and (13) (15 F.R. 8303, Dec. 2, 1950) to read as follows:

§ 73.154 Flammable solids and oxidizing materials not specifically provided for.

(a) * * *

(12) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 275-pound test double-faced fiberboard and provided with a perimeter liner and bottom pad of at least 200-pound test fiberboard. Boxes constructed of at least 350-pound fiberboard having top and bottom pads shall not require perimeter liner. Product must be contained within a tightly closed polyethylene or other equally efficient plastic bag constructed of material having minimum thickness of 0.004 inch. Not more than 25 pounds net weight of product may be packed in one outside box.

(13) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass bottles not over 5 pounds capacity each. Not more than four bottles having capacity of 5 pounds each, shall be packed in one outside container. Shipper must have established that completed package meets test requirements prescribed by § 78.210–10 of this chapter.

3. In § 73.163 add paragraph (a) (8) (15 F.R. 8305, Dec. 2, 1950) to read as follows:

§ 73.163 Chlorate of soda, chlorate of potash, and other chlorates.

(a) * * *

(8) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass bottles not over 5 pounds capacity each. Not more than four bottles having capacityof 5 pounds each, shall be packed in one outside container. Shipper must have established that completed package meets test requirements prescribed by § 78.210–10 of this chapter.

4. In § 73.164 add paragraph (a) (4) (15 F.R. 8305, Dec. 2, 1950) to read as follows:

§ 73.164 Chromic acid.

(a) * * *

(4) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass bottles not over 5 pounds capacity each. Not more than four bottles having capacity of 5 pounds each, shall be packed in one outside container. Shipper must have established that completed package meets test requirements prescribed by § 78.210–10 of this chapter.

* * * * *

5. In § 73.188 add paragraph (a) (5) (15 F.R. 8308, Dec. 2, 1950) to read as follows:

§ 73.188 Phosphoric anhyride.

(a) * * *

(5) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass bottles not over 1 pound capacity each. Not more than 12 bottles shall be packed in one outside box. Shipper must have established that completed package meets test requirements prescribed by § 78.210–10 of this chapter.

6. In § 73.206 add paragraph (a) (7) (15 F.R. 8310, Dec. 2, 1950) to read as follows:

§ 73.206 Sodium or potassium, metallic, sodium amide, sodium potassium alloys, lithium metal, lithium silicon, lithium hydride, and lithium aluminum hydride.

(a) * * *

(7) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 375-pound test (Mullen or Cady) solid fiberboard with inside airtight metal container which must have a closing device securely fastened by positive means (not friction). Each inside metal container must be individually nested into a double-faced corrugated partition of at least 200-pound test (Mullen or Cady) which is in turn surrounded on all sides by a peripheral double-walled corrugated liner of at least 200-pound test (Mullen or Cady). Authorized gross weight not over 90 pounds.

7. In § 73.207 add paragraph (b) (6); amend paragraph (e) (15 F.R. 8311, Dec. 2, 1950) (21 F.R. 365, Jan. 19, 1956) to read as follows:

§ 73.207 Sulfide of sodium or sulfide of potassium, fused or concentrated, when ground.

* * * * *

(b) * * *

(6) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 275-pound test double-faced fiberboard and provided with a perimeter liner and bottom pad of at least 200-pound test fiberboard. Boxes constructed of at least 350-pound fiberboard having top and bottom pads shall not require perimeter liner. Product must be contained within a tightly closed polyethylene or other equally efficient plastic bag constructed of material having minimum thickness of 0.004 inch. Not more than 25 pounds net weight of product may be packed in one outside box.

* * * * *

(e) Sodium sulfide containing 35 percent or more combined water by weight, fused or concentrated but not ground (may be chipped, flaked, or broken), when packed in steel barrels or drums that are equipped with moisture-tight closures, or in strong-tight fiber drums having a moisture-barrier incorporated in the walls and equipped with moisture-tight closures, is not subject to Parts 71–78 and 197 of this chapter.

8. In § 73.221 amend paragraph (a) (3); add paragraphs (a) (9) and (10) (22 F.R. 11031, Dec. 31, 1957) (15 F.R. 8312, Dec. 2, 1950) to read as follows:

§ 73.221 Liquid organic peroxides, n.o.s. and liquid organic peroxide solutions, n.o.s. other than acetyl peroxide solution, acetyl benzoyl peroxide solution, cumene hydroperoxide, dicumyl peroxide, hydrogen peroxide, peracetic acid, and tertiary butylisopropyl benezene hydroperoxide.

(a) * * *

(3) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside containers which must be glass, earthenware, polyethylene bottles, or metal, not over 1 gallon each. Not more than four 1-gallon polyethylene bottles; or not more than one—1 gallon glass, earthenware, or metal inside container, which must be cushioned with incombustible packing material in sufficient quantity to absorb the contents of the inner container, shall be packed in one outside fiberboard box. Metal and polyethylene inside containers authorized only for material which will not react dangerously with or be decomposed by contact with metal polyethylene.

* * * * *

(9) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside spec. 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons nominal capacity each.

(10) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside polyethylene bottles, not over 5-gallons capacity each, as specified by § 78.205–34 of this chapter. Not more than one bottle shall be packed in one outside box. Authorized only for material which will not react dangerously with or cause decomposition of polyethylene.

9. Add § 73.237 (15 F.R. 8312, Dec. 2, 1950) to read as follows:

§ 73.237 Chlorine dioxide hydrate, frozen.

(a) Chlorine dioxide hydrate, frozen, must be packed in specification containers as follows:

(1) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes, with inside packages of polyethylene or other suitable material. Fiberboard boxes must be reinforced and insulated and sufficient dry ice must be used to maintain the hydrate in a frozen state during transportation. Shipments are authorized for transportation by private or contract carrier by motor vehicle only.

(2) Containers and means of refrigeration providing equal efficiency, when approved by the Bureau of Explosives, are authorized for shipments by private carrier by motor vehicle.

Subpart E—Acids and Other Corrosive Liquids; Definition and Preparation

1. In § 73.245 add paragraphs (a) (21) and (22) (15 F.R. 8313, Dec. 2, 1950) to read as follows:

§ 73.245 Acids or other corrosive liquids not specifically provided for.

(a) * * *

(21) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

(22) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

2. In § 73.256 add paragraph (a) (4) (15 F.R. 8315, Dec. 2, 1950) to read as follows:

§ 73.256 Compounds, cleaning, liquid.

(a) * * *

(4) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

3. In § 73.257 add paragraph (d) (15 F.R. 8315, Dec. 2, 1950) to read as follows:

§ 73.257 Electrolyte (acid) or corrosive battery fluid.

* * * * *

(d) Strong, tightly closed metal drums not over 15 gallons capacity each, having not to exceed 25 eight-ounce polyethylene, or other suitable plastic bottles, securely cushioned therein. Shipments authorized only by, for, or to the Departments of the Army, Navy, or Air Force of the United States Government. The drum containing the electrolyte acid or corrosive battery fluid may be securely attached to another steel drum containing a dry, charged storage battery or batteries.

4. In § 73.263 amend paragraph (a) (22); add paragraphs (a) (23) and (24) (24 F.R. 8058, Oct. 6, 1959) (15 F.R. 8317, Dec. 2, 1950) to read as follows:

§ 73.263 Hydrochloric (muriatic) acid, hydrochloric (muriatic) acid mixtures, hydrochloric (muriatic) acid solution, inhibited, sodium chlorite solution, and cleaning compounds, liquid, containing hydrochloric (muriatic) acid.

(a) * * *

(22) Spec. 21B (§ 78.223 of this chapter). Fiber drums with inside polyethylene carboys, spec. 2T (§ 78.21 of this chapter), or spec. 2S (§ 78.35 of this chapter) polyethylene drums not over 30 gallons capacity each. Fiber drums for polyethylene carboys shall be constructed for a gross weight of at least 150 pounds, and for polyethylene drums for a gross weight of at least 225 pounds; in either case shipping gross weight may exceed that marked on the fiber drum.

(23) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

(24) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

5. In § 73.265 add paragraph (a) (4) (21 F.R. 4565, June 26, 1956) to read as follows:

§ 73.265 Hydrofluosilicic acid.

(a) * * *

(4) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

6. In § 73.266 amend paragraph (c) (8) (24 F.R. 905, Feb. 6, 1959) to read as follows:

§73.266 Hydrogen peroxide solution in water.

* * * * *

(c) * * *

(8) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside polyethylene bottles not over 1 gallon capacity each with vented closures; such bottles over 32 ounces capacity each must be completely contained in a securely closed polyethylene bag or tube constructed of material having minimum film thickness of 0.003 inch. Alkaline solutions containing sodium hydroxide or other alkaline materials packed in glass or polyethylene bottles not over 1 gallon capacity each and with hydrogen peroxide solution contained in polyethylene bottles not over 1 gallon capacity each, when shipped as a wood bleach preparation, may be packed together in inside chipboard or corrugated fiberboard boxes or separated by corrugated fiberboard partitions; not more than six inside chipboard or corrugated fiberboard boxes having inside bottles not over 32 ounces each, or more than 4 one gallon bottles separated by corrugated fiberboard partitions may be packed in one outside box; completed package with mixed contents must be capable of withstanding a drop from a height of four feet onto solid concrete without failure of any inside container.

7. In § 73.271 amend paragraph (a) (9) (24 F.R. 8058, Oct. 6, 1959) to read as follows:

§ 73.271 Phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(9) Spec. 103A, 103A–W, or 111A100–W–2 (§§ 78.266, 78.281, or 78.304 of this chapter). Tank cars. Spec. 103A (§ 78.266 of this chapter) tanks must be lead-lined steel or made of steel at least 10 percent nickel clad. Spec. 103A–W or 111A100–W–2 (§§ 78.281 or 78.304 of this chapter) tanks must be lead-lined steel or made of steel with a minimum thickness of nickel cladding of 1/16 inch. Nickel cladding in tanks must have a minimum nickel content of at least 99 percent pure nickel. Openings in tank heads to facilitate application of lead lining or nickel cladding are authorized and must be closed in an approved manner.

* * * * *

8. In § 73.272 add paragraphs (f) (7) and (8) (15 F.R. 8321, Dec. 2, 1950) to read as follows:

§ 73.272 Sulfuric acid.

* * * * *

(f) * * *

(7) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

(8) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

9. In § 73.274 amend paragraph (a) (1) Note 1 (15 F.R. 8321, Dec. 2, 1950) to read as follows:

§ 73.274 Fluosulfonic acid.

(a) * * *

(1) * * *

NOTE 1: Bottles manufactured of Pyrex glass or glass of equal acid resistance, authorized only for material containing an excess of sulfur trioxide, with Pyrex glass stoppers, or glass stoppers of equal acid resistance, ground to fit and held in place by plaster of Paris covered by strong cloth securely tied; each bottle must be placed in a metal container, well cushioned therein with incombustible absorbent materials such as mineral wool, infusorial earth (kieselguhr), asbestos, etc.

* * * * *

10. In § 73.277 amend paragraph (a) (1); add paragraph (a) (5) (15 F.R. 8322, Dec. 2, 1950) to read as follows:

§ 73.277 Hypochlorite solutions.

(a) * * *

(1) Spec. 15A, 15B, 15C or 12B. (§§ 78.168, 78.169, 78.170 or 78.205 of this chapter). Wooden or fiberboard boxes with glass, earthenware, or polyethylene inside containers of not more than 1 gallon capacity each. Packages must not weigh over 65 pounds gross nor contain more than 4 glass or earthenware inside containers if their capacity is greater than 5 pints each, or more than six such inside polyethylene containers.

* * * * *

(5) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

11. In § 73.294 amend paragraph (a) (2) (21 F.R. 9357, Nov. 30, 1956) to read as follows:

§ 73.294 Monochloroacetic acid, liquid.

(a) * * *

(2) Spec. 103A–N–W or 103A–W (§§ 78.299 or 78.281 of this chapter). Tank cars. Spec. 103A–W (§ 78.281 of this chapter) tank cars must be nickel clad at least 20 percent. Openings in tank heads to facilitate application of nickel cladding are authorized and must be closed in an approved manner.

12. In § 73.295 amend paragraph (a) (11) (23 F.R. 2327, April 10, 1958) to read as follows:

§ 73.295 Benzyl chloride.

(a) * * *

(11) Spec. 103A or 103A–W (§§ 78.266 or 78.281 of this chapter). Tank cars which may be 10 percent nickel clad. Openings in tank heads to facilitate application of nickel cladding are authorized and must be closed in an approved manner. Authorized for stabilized benzyl chloride only.

Subpart F—Compressed Gases; Definition and Preparation

1. In § 73.300 amend Note 3 to paragraph (b) (4) (17 F.R. 7282, Aug. 9, 1952) to read as follows:

§ 73.300 Compressed gases; definition.

* * * * *

(b) * * *

(4) * * *

NOTE 3. A description of the Bureau of Explosives' Flame Projection Apparatus, Open Drum Apparatus, Closed Drum Apparatus, and method of tests may be procured from the Bureau of Explosives, 63 Vesey Street, New York 7, New York.

2. In § 73.309 amend paragraph (a) (2) (15 F.R. 8327, Dec. 2, 1950) to read as follows:

§ 73.309 Acetylene gas.

(a) * * *

(2) The amount of solvent at 70° F. for a cylinder having a shell water capacity exceeding 20 pounds (nominal) shall be determined from the following table:

Percent porosity of filler:	*Maximum acetone solvent percent shell capacity by volume*
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

* * * * *

3. In § 73.314 amend paragraph (a) Table, and Notes 2 and 18 thereto (22 F.R. 2227, 2228, April 4, 1957) (22 F.R. 7837, Oct. 3, 1957) to read as follows:

§ 73.314 Compressed gases in tank cars.

(a) * * *

Kind of gas	Maximum permitted filling density, Note 1	Required type of tank car, Note 2
Add	*Percent*	
Hexafluoropropylene	100	106A500, 106A500X, 110A500–W, Note 12.

* * * * *

NOTE 2: Unless otherwise specifically provided, when class 105A–W, 105A–AL–W, 106A500, 106A500X, 109A–AL–W, or 112A–W tank cars are prescribed, the same class tank cars having higher marked test pressures than those prescribed may also be used.

* * * * *

NOTE 18: The quantity of chlorine loaded into a single-unit tank car must not exceed 60,000 pounds, except that not more than 110,000 pounds nor less than 107,800 pounds of chlorine may be loaded in such cars if insulated with 4 inches of corkboard and constructed, maintained, and retested in full compliance with I.C.C. Specification 105A500–W. Cars may be registered and jackets stenciled either 105A300–W or 105A500–W and equipped with the safety valve required by the specification to which registered.

Subpart G—Poisonous Articles; Definition and Preparation

1. In § 73.346 add paragraphs (a) (24) and (25) (15 F.R. 8335, Dec. 2, 1950) to read as follows:

§ 73.346 Poisonous liquids not specifically provided for.

(a) * * *

(24) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside specification 2U (§ 78.24 of this chapter) polyethylene containers not over 5 gallons capacity each.

(25) Spec. 16A (§ 78.185 of this chapter). Wirebound wooden boxes (see § 78.185–22 of this chapter) with inside specification 2U (§ 78.24 of this chapter) polyethylene containers.

2. In § 73.347 add paragraph (a) (8) (15 F.R. 8335, Dec. 2, 1950) to read as follows:

§ 73.347 Aniline oil.

(a) * * *

(8) Spec. 12A (§ 78.210 of this chapter). Fiberboard boxes with inside glass bottles or metal containers not over 1 gallon capacity each. Not more than four inside containers having capacity of 1 gallon each, shall be packed in one outside container. Shipper must have established that completed package meets test requirements prescribed by § 78.210–10 of this chapter.

3. In § 73.354 add paragraph (a) (7) (15 F.R. 8336, Dec. 2, 1950) to read as follows:

§ 73.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(7) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 375-pound test (Mullen or Cady) solid fiberboard with inside metal cans

enclosed in hermetically sealed (soldered) metal cans, not over 5 pounds capacity each. Each inside metal container must be enclosed in a taped, double-faced corrugated liner constructed of at least 200-pound test (Mullen or Cady) fiberboard and fitted with die-cut end caps constructed of at least 200-pound test (Mullen or Cady) double-walled corrugated fiberboard. Authorized gross weight not over 90 pounds.

4. In § 73.365 add paragraph (a) (15) (15 F.R. 8336, Dec. 2, 1950) to read as follows:

§ 73.365 Poisonous solids not specifically provided for.

(a) * * *

(15) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 275-pound test double-faced fiberboard and provided with a perimeter liner and bottom pad of at least 200-pound test fiberboard. Boxes constructed of at least 350-pound fiberboard having top and bottom pads shall not require perimeter liner. Product must be contained within a tightly closed polyethylene or other equally efficient plastic bag constructed of material having minimum thickness of 0.004 inch. Not more than 25 pounds net weight of product may be packed in one outside box.

5. In § 73.370 add paragraph (a) (12) (15 F.R. 8337, Dec. 2, 1950) to read as follows:

§ 73.370 Cyanides, or cyanide mixtures, except cyanide of calcium and mixtures thereof.

(a) * * *

(12) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes constructed of at least 275-pound test double-faced fiberboard and provided with a perimeter liner and bottom pad of at least 200-pound test fiberboard. Boxes constructed of at least 350-pound fiberboard having top and bottom pads shall not require perimeter liner. Product must be contained within a tightly closed polyethylene or other equally efficient plastic bag constructed of material having minimum thickness of 0.004 inch. Not more than 25 pounds net weight of product may be packed in one outside box.

* * * * *

6. In § 73.396 amend paragraph (a) (16 F.R. 11780, Nov. 21, 1951) to read as follows:

§ 73.396 Radioactive materials, handling.

(a) When radioactive materials are loaded into railroad cars or motor vehicles by the shipper, the shipper shall observe all applicable requirements of Parts 74, 75, or 77 of this chapter, as the case may be.

Subpart H—Marking and Labeling Explosives and Other Dangerous Articles

1. In § 73.402 paragraph (b) (1) amend only the certificate (20 F.R. 8104, Oct. 28, 1955) to read as follows:

§ 73.402 Labeling dangerous articles.

* * * * *

(b) * * *

(1) * * *

This is to certify that the contents of this package are properly described by name and are packed and marked and are in proper condition for transportation according to regulations prescribed by the Interstate Commerce Commission and the Administrator of the Federal Aviation Agency. (For shipments on passenger-carrying aircraft the following must be added to certificate: This shipment is within the limitations prescribed for passenger-carrying aircraft.)

2. In § 73.404 amend paragraph (f) (15 F.R. 8341, Dec. 2, 1950) to read as follows:

§ 73.404 Labels.

* * * * *

(f) As certification of compliance with regulations is also required by other Government agencies, and to avoid multiplicity of certifications, there may be added to the certificate on labels "and the Commandant of the Coast Guard," or "and the Administrator of the Federal Aviation Agency," or "and the Post Office Department," as is necessary.

§ 73.405 [Amendment]

3. In § 73.405 paragraph (b), amend the red label for flammable liquids for shipment by air by deleting therefrom the following words, "DO NOT LOAD WITH ARTICLES BEARING YELLOW LABELS;" (20 F.R. 8104, Oct. 28, 1955).

§ 73.406 [Amendment]

4. In § 73.406 paragraph (b), amend the yellow label for flammable solids and oxidizing materials for shipment by air by changing the following words, "DO NOT LOAD WITH ARTICLES BEARING WHITE OR RED LABELS," to read, "DO NOT LOAD WITH ARTICLES BEARING WHITE LABELS" (21 F.R. 323, Jan. 17, 1956).

§ 73.407 [Amendment]

5. In § 73.407 paragraph (b) (1), (2), and (3), amend the white label for acids, corrosive liquids, and alkaline caustic liquids for shipment by air by changing the following words, "DO NOT LOAD WITH ARTICLES BEARING YELLOW OR POISON LABELS," to read, "DO NOT LOAD WITH ARTICLES BEARING YELLOW LABELS" (21 F.R. 673, Jan. 31, 1956).

§ 73.408 [Amendment]

6. In § 73.408 paragraph (b), amend the red label for flammable gases for shipment by air by deleting therefrom the following words, "DO NOT LOAD WITH ARTICLES BEARING YELLOW LABELS" (20 F.R. 8104, Oct. 28, 1955).

§ 73.409 [Amendment]

7. In § 73.409 paragraph (b), labels for shipments of poisonous articles and tear gases by air, cancel paragraph (b) (1) and label; redesignate paragraph (b) (2) as paragraph (b) (1) and delete from the label the following words, "DO NOT LOAD WITH ARTICLES BEARING WHITE LABELS;" redesignate paragraph (b) (3) as paragraph (b) (2) and delete from the label the following words, "DO NOT LOAD WITH ARTICLES BEARING WHITE LABELS" (20 F.R. 8105, Oct. 28, 1955).

8. In § 73.414 paragraph (c) add Note 1 (20 F.R. 8105, Oct. 28, 1955) to read as follows:

§ 73.414 Radioactive materials labels.

* * * * *

(c) * * *

NOTE 1: This label must be duly executed by the shipper and the number of radiation units must be shown. For purposes of these regulations 1 unit equals 1 milliroentgen per hour at 1 meter for hard gamma radiation or the amount of radiation which has the same effect on film as 1 mrhm of hard gamma rays of radium filtered by ½ inch of lead.

PART 74—CARRIERS BY RAIL FREIGHT

Subpart A—Loading, Unloading, Placarding and Handling Cars; Loading Packages Into Cars

In § 74.526 amend paragraph (o) (2) (23 F.R. 2328, April 10, 1958) to read as follows:

§ 74.526 Loading explosives into cars.

* * * * *

(o) * * *

(2) Truck body or trailer shall be so secured on the car that it will not permanently change position or show evidence of failure or impending failure of the method of securing truck body or trailer under impact from each end of at least 8 miles per hour. Efficiency shall be determined by actual test, using dummy loads equal in weight and general character to the material to be shipped.

Subpart C—Placards on Cars

§ 74.552 [Amendment]

1. In § 74.552 paragraph (a) amend the placard by changing the following words, "This car must not be next to a car containing Explosives," to read, "This car must not be next to a car placarded EXPLOSIVES" (15 F.R. 8352, Dec. 2, 1950).

§ 74.553 [Amendment]

2. In § 74.553 paragraph (a) amend the placard by changing the following words, "This car must not be next to a car containing explosives or carloads of undeveloped film," to read, "This car must not be next to a car placarded EXPLOSIVES or next to carloads of undeveloped film" (22 F.R. 7839, Oct. 3, 1957).

Subpart E—Handling by Carriers by Rail Freight

1. In § 74.584 amend paragraph (a) Table; add paragraph (g) (1) (24 F.R. 5642, July 14, 1959) (24 F.R. 907, Feb. 6, 1959) to read as follows:

§ 74.584 Waybills, switching orders, or other billing.

(a) * * *

	Label notation to follow entry of the article on the billing	Placard notation to follow entry of the article on the billing	Placard endorsement must be ⅜" high and appear on the billing near the space provided for the car number
Add			
For empty tank cars that last contained flammable poisonous liquids, class A.	None	"Dangerous-Flammable Poison Gas-Empty Placard".	"Dangerous-Flammable Poison Gas-Empty".

* * * * *

(g) * * *

(1) For tank cars that last contained flammable poisonous liquids, class A, the billing must show the words "Dangerous—Flammable Poison Gas—Empty."

2. In § 74.596 amend paragraph (c) (1) (15 F.R. 8358, Dec. 2, 1950) to read as follows:

§ 74.596 Inspection of tank cars.

(c) * * *

(1) Prompt reports of such movements, showing initials and numbers of cars, must be made by the railroad carding the cars to the Bureau of Explosives, 63 Vesey Street, New York 7, New York.

PART 75—CARRIERS BY RAIL EXPRESS

In § 75.660 amend the introductory text of paragraph (a) (15 F.R. 8360, Dec. 2, 1950) to read as follows:

§ 75.660 Violations and accidents or fires must be reported.

(a) Violations and accidents or fires must be reported promptly by the express carrier to the Bureau of Explosives, 63 Vesey Street, New York 7, New York.

PART 76—RAIL CARRIERS IN BAGGAGE SERVICE

In § 76.707 amend paragraph (a) (18 F.R. 805, Feb. 7, 1953) to read as follows:

§ 76.707 Reporting violations and accidents or fires.

(a) Serious violations of the regulations in Parts 71–78 of this chapter, facts relating to leaking or broken containers, and accidents or fires in connection with the transportation or storage on railway property of explosives or other dangerous articles, must be reported promptly by the rail carrier in baggage service to the Bureau of Explosives, 63 Vesey Street, New York 7, New York. (See § 74.588 of this chapter.)

PART 77—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

Subpart A—General Information and Regulations

1. In § 77.807 amend the introductory text of paragraph (a) (18 F.R. 805, Feb. 7, 1953) to read as follows:

§ 77.807 Improperly packed or damaged shipments in transportation.

(a) For the protection of the public against fire, explosion, or other, or further hazard, with respect to shipments of explosives or other dangerous articles offered for transportation or in transit by any common or contract carrier by motor vehicle, such carrier shall make immediate report to the Bureau of Explosives, 63 Vesey Street, New York 7, New York, for handling, any of the following emergency matters coming to their attention (see also §§ 77.853 to 77.870 for handling shipments in transit):

2. In § 77.815 amend paragraph (f) (15 F.R. 8363, Dec. 2, 1950) to read as follows:

§ 77.815 Labels.

* * * * *

(f) Samples will be furnished, on request, by the Bureau of Explosives, 63 Vesey Street, New York 7, New York.

Subpart D—Vehicles and Shipments in Transit; Accidents

§ 77.856 [Amendment]

1. In § 77.856 amend paragraph (d) only to the extent of inserting "Part 192" in lieu of "Part 193" where reference is made to the Motor Carrier Safety Regulations (15 F.R. 8370, Dec. 2, 1950).

2. In § 77.859 amend paragraph (b) only to the extent of inserting "Part 192" in lieu of "Part 193" where reference is made to the Motor Carrier Safety Regulations (15 F.R. 8371, Dec. 2, 1950).

PART 78—SHIPPING CONTAINER SPECIFICATIONS

Subpart A—Specifications for Carboys, Jugs in Tubs, and Rubber Drums

1. In § 78.1–9 amend paragraph (a) (15 F.R. 8374, Dec. 2, 1950) to read as follows:

§ 78.1 Specification 1A; boxed carboys.

§ 78.1–9 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

2. In § 78.3–9 amend paragraph (a) (15 F.R. 8375, Dec. 2, 1950) to read as follows:

§ 78.3 Specification 1C; carboys in kegs.

§ 78.3–9 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

3. In § 78.4–8 amend paragraph (a) (15 F.R. 8376, Dec. 2, 1950) to read as follows:

§ 78.4 Specification 1D; boxed glass carboys.

§ 78.4–8 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

4. In § 78.5–9 amend paragraph (a) (15 F.R. 8377, Dec. 2, 1950) to read as follows:

§ 78.5 Specification 1X; boxed carboys, 5 to 6½ gallons, for export only.

§ 78.5–9 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

5. In § 78.6–10 amend paragraph (a) (15 F.R. 8378, Dec. 2, 1950) to read as follows:

§ 78.6 Specification 1EX; glass carboys in plywood drums.

§ 78.6–10 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

6. In § 78.7–8 amend paragraph (a) (16 F.R. 11782, Nov. 21, 1951) to read as follows:

§ 78.7 Specification 1E; glass carboys in plywood drums.

§ 78.7–8 Tests.

(a) *Apparatus.* Standard required. Detail prints can be obtained from Bureau of Explosives, 63 Vesey Street, New York 7, New York.

Subpart B—Specifications for Inside Containers, and Linings

Add § 78.24 (15 F.R. 8380, Dec. 2, 1950) to read as follows:

§ 78.24 Specification 2U; molded or thermoformed polyethylene containers. Removable head containers or containers fabricated from film not authorized.

§ 78.24–1 Compliance.

(a) Required in all details.

§ 78.24–2 Material.

(a) Containers shall be made of polyethylene and shall have the following properties (see Note 1):

Melt index	2.6 maximum.
Density	0.910–0.925.
Tensile strength	1,500 pounds per square inch minimum.
Percent elongation	400 percent minimum.

NOTE 1: Properties to be obtained by a test method approved by Bureau of Explosives. Other materials may be added which shall not affect the properties specified in paragraph (a) of this section.

§ 78.24–3 Construction and capacity.

(a) Container must be constructed in accordance with the following table:

Rated capacity not over (gallons)	Minimum overall thickness (inch)[1]	Percent outage over marked capacity permitted
5	0.010	15
15	.015	15

[1] For cubical containers, the area adjacent to and forming the opening for closure may have a minimum thickness of 0.008 inch for 5 gallons rated capacity and sizes larger than 5 gallons may have a minimum thickness of 0.010 inch.

§ 78.24–4 Closure.

(a) Shall be of material resistant to lading and adequate to prevent leakage. Vented closures where specified under Part 73 of this chapter authorized. No opening over 2.7 inches in diameter authorized.

§ 78.24–5 Marking.

(a) Each container must be permanently marked by embossment to show rated capacity, month and year of manufacture, maker (symbols, if used, must be registered with the Bureau of Explosives), and ICC–2U in figures and letters at least ¼ inch in size.

§ 78.24–6 Type test.

(a) Samples taken at random shall withstand prescribed test without breakage. Test shall be made on each type and size at each manufacturing location starting production and shall be repeated every four months. The type test is as follows:

(1) Empty inner container shall be dropped on any part from a height of 6 feet onto solid concrete immediately after conditioning for at least 24 hours at 0° F.

§ 78.24–7 Tests.

(a) Samples taken at random, filled and prepared as specified and closed as for use, shall be capable of withstanding the following tests without leakage:

(1) The polyethylene container in a prescribed outer specification container, as authorized by Part 73 of this chapter, filled to 98 percent of capacity with water shall be dropped from a height of 4 feet onto solid concrete so as to drop diagonally on top edge or any part considered weaker.

(2) The polyethylene container in a prescribed outer specification container, as authorized by Part 73 of this chapter, filled to 98 percent of capacity with a solution which is compatible with polyethylene and remains liquid at 0° F. shall be dropped from a height of 4 feet onto solid concrete on any part of the container when container and contents are at or slightly below 0° F.

(3) The polyethylene container in a prescribed outer specification container, as authorized in Part 73 of this chapter, filled to 98 percent of capacity with water shall be capable of withstanding a vibration test by placing the container on the vibration table anchored in such manner that all horizontal motion shall be restricted and only vertical motion allowed. The test shall be performed for one hour using an amplitude of one inch at a frequency that causes the test container to be raised from the floor of the table to such a degree that a piece of paper or flat steel strap or tape can be passed between the table and the container.

Subpart C—Specifications for Cylinders

In § 78.51–20 paragraph (a) amend the heading of Table I (24 F.R. 8060, Oct. 6, 1959) to read as follows:

§ 78.51 Specification 4BA; welded or brazed steel cylinders made of definitely prescribed steels.

§ 78.51–20 Authorized steel.

(a) * * *

TABLE I—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent
	GLX-50-W [2 4]

* * * * *

2. In § 78.59–16 amend paragraph (d) (1) (15 F.R. 8420, Dec. 2, 1950) to read as follows:

§ 78.59 Specification 8; steel cylinders with approved porous filling for acetylene.

§ 78.59–16 Porous filling.

* * * * *

(d) * * *

(1) Having shell volumetric capacity above 20 pounds water capacity (nominal) shall not exceed the following:

Percent porosity of filler:	*Maximum acetone solvent percent shell capacity by volume*
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

3. In § 78.60–4 paragraph (a) amend the heading of Table I; amend § 78.60–20 paragraph (d) (1) (24 F.R. 8060, Oct. 6, 1959) (15 F.R. 8424, Dec. 2, 1950) to read as follows:

§ 78.60 Specification 8AL; steel cylinders with approved porous filling for acetylene.

§ 78.60–4 Authorized steel.

(a) * * *

TABLE I—AUTHORIZED MATERIALS

Designation	Chemical analysis—limits in percent
	GLX-50-W [2 4]

* * * * *

§ 78.60–20 Porous filling.

* * * * *

(d) * * *

(1) Having shell volumetric capacity above 20 pounds water capacity (nominal) shall not exceed the following:

Percent porosity of filler:	*Maximum acetone solvent percent shell capacity by volume*
90 to 92	43.4
87 to 90	42.0
83 to 87	40.0
80 to 83	38.6
75 to 80	36.2
70 to 75	33.8
65 to 70	31.4

Subpart D—Specifications for Metal Barrels, Drums, Kegs, Cases, Trunks, and Boxes

1. In § 78.83–5 amend paragraph (b) (15 F.R. 8435, Dec. 2, 1950) to read as follows:

§ 78.83 Specification 5C; steel barrels or drums.

§ 78.83–5 Seams.

* * * * *

(b) Chime seams welded or double-seamed and welded.

2. In § 78.133–11 amend paragraph (b) (23 F.R. 2331, April 10, 1958) to read as follows:

§ 78.133 Specification 37P; steel drums with polyethylene liner.

§ 78.133–11 Type tests.

* * * * *

(b) Completely assembled composite containers of each size manufactured, filled to 98 percent of actual capacity with water, shall be capable of withstanding a vibration test by placing the container on the vibration table anchored in such manner that all horizontal motion shall be restricted and only vertical motion allowed. The test shall be performed for one hour using an amplitude of one inch at a frequency that causes the test container to be raised from the floor of the table to such a degree that a piece of paper or flat steel strap or tape can be passed between the table and the container.

Subpart E—Specifications for Wooden Barrels, Kegs, Boxes, Kits, and Drums

Add § 78.185–22 (15 F.R. 8471, Dec. 2, 1950) to read as follows:

§ 78.185 Specification 16A; plywood or wooden boxes, wirebound.

§ 78.185–22 Special box authorized only when used in conjunction with inside specification 2U (§ 78.24 of this chapter) polyethylene 15 gallon cubical containers.

(a) The boxes shall comply with specification 16A requirements for a gross weight of at least 200 pounds, except as follows:

(1) The top section of boxes may have a hole not over 3 9/16 inches in diameter midway between the cleats, and centered not less than 3 9/16 inches from either the back or front edge of boxes.

(2) Ends provided with 2 liners (strips) running completely across ends; each liner having same thickness as ends, and having a minimum width of 3 inches are not required to be fastened as specified by § 78.185–20. Each liner must be attached to ends by 2 complete rows of staples.

(3) Paper overlaid veneer having veneer core of group 3 or 4 wood and completely covered on each side with 42 pound basis weight kraft paper securely adhered thereto by moisture resistant adhesive, is authorized. Total combined thickness of finished board shall be not less than 0.160 inch.

(b) Wirebound wooden or paper overlaid veneer board boxes must be provided with full size double-faced corrugated liners of at least 125 pound test (Mullen or Cady) for bottom and sides, and a full area top pad of at least 350 pound test (Mullen or Cady) corrugated fiberboard.

(c) Marking required:

(1) Marking on each box with letters and figures at least ½ inch high in rectangle as follows:

ICC-16A-C

(2) This mark shall be understood to certify that outer container complies with all construction requirements of the specification.

(3) Name of maker shall be located just above, below, or following the mark specified in subparagraph (1) of this paragraph; symbol (letters) authorized if registered with the Bureau of Explosives.

Subpart F—Specifications for Fiberboard Boxes, Drums, and Mailing Tubes

1. In § 78.205–17 amend paragraph (a)(2) (18 F.R. 5277, Sept. 1, 1953) to read as follows:

§ 78.205 Specification 12B; fiberboard boxes.

§ 78.205–17 Closing for shipment.

(a) * * *

(2) For fiberboard boxes containing not more than 1 inside metal can not exceeding 1 gallon nominal capacity, by application of 2 strips of pressure-sensitive tape not less than ½ inch in width, 1 strip to be placed approximately equal distance over the seam of abutting outer flaps, the other at a right angle to the first and spaced approximately equal distance on the closure face; strips must be of sufficient length to extend not less than 1 inch beyond score lines on side and end panels. Tape shall have a minimum tensile strength of 160 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width; and minimum elongation of 12 percent at break, or having a minimum longitudinal tensile strength of not less than 240 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width and a minimum elongation of 3 percent at break.

2. In § 78.206–17 amend paragraph (a)(2) (18 F.R. 5277, Sept. 1, 1953) to read as follows:

§ 78.206 Specification 12C; fiberboard boxes.

§ 78.206–17 Closing for shipment.

(a) * * *

(2) For fiberboard boxes containing not more than 1 inside metal can not exceeding 1 gallon nominal capacity, by application of 2 strips of pressure-sensitive tape not less than ½ inch in width, 1 strip to be placed approximately equal distance over the seam of abutting outer flaps, the other at a right angle to the first and spaced approximately equal distance on the closure face; strips must be of sufficient length to extend not less than 1 inch beyond score lines on side and end panels. Tape shall have a minimum tensile strength of 160 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width; minimum elongation of 12 percent at break, or having a minimum longitudinal tensile strength of not less than 240 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width and a minimum elongation of 3 percent at break.

3. In § 78.207–17 amend paragraph (a)(2) (18 F.R. 5277, Sept. 1, 1953) to read as follows:

§ 78.207 Specification 12D; fiberboard boxes.

§ 78.207–17 Closing for shipment.

(a) * * *

(2) For fiberboard boxes containing not more than 1 inside metal can not exceeding 1 gallon nominal capacity, by application of 2 strips of pressure-sensitive tape not less than ½ inch in width, 1 strip to be placed approximately equal distance over the seam of abutting outer flaps, the other at a right angle to the first and spaced approximately equal distance on the closure face; strips must be of sufficient length to extend not less than 1 inch beyond score lines on side and end panels. Tape shall have a minimum tensile strength of 160 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width; and minimum elongation of 12 percent at break, or having a minimum longitudinal tensile strength of not less than 240 pounds per inch of width; minimum adhesion value of 18 ounces per inch of width and a minimum elongation of 3 percent at break.

4. In § 78.209–12 amend paragraph (a)(1) (22 F.R. 3929, June 5, 1957) to read as follows:

§ 78.209 Specification 12H; fiberboard boxes.

§ 78.209–12 Closing for shipment.

(a) * * *

(1) Tape used for closing must be pressure sensitive, filament reinforced, except as provided by subparagraph (2) of this paragraph. Backing for pressure sensitive tape shall have a minimum longitudinal tensile strength of 160 pounds per inch of width and a minimum elongation of 12 percent at break, or a minimum longitudinal tensile strength of 240 pounds per inch of width and a minimum elongation of 3 percent at break. The tape shall have sufficient transverse strength to prevent raveling or separation of the filaments. Tape shall have an adhesion of 18 ounces per inch of width minimum when tested according to acceptable methods. Tape shall adhere immediately and firmly to fiberboard surface when applied with hand pressure in the temperature range of 0° to 120° F. No solvent or heat shall be necessary to activate the adhesive. The tape must be manufactured of material which will not delaminate or separate when submerged in water for 72 hours and which will not show any delamination or bleeding up to 160° F., and which will not lose its strength, delaminate or become brittle at 0° F.

5. In § 78.214–6 amend the introductory text of paragraph (c) (19 F.R. 3263, June 3, 1954) to read as follows:

§ 78.214 Specification 23F; fiberboard boxes.

§ 78.214–6 Tape.

* * * * *

(c) Pressure sensitive tape for closure, paper backed. The basic weight of the paper shall be not less than 70 pounds per ream after sizing and coating. Longitudinal tensile strength shall be not less than 50 pounds per inch of width and the latitudinal strength shall be not less than 11 pounds per inch of width, or for application as provided by § 78.214–16(d) tape must be pressure sensitive filament reinforced. Tape backing shall have a minimum longitudinal tensile strength of 160 pounds per inch of width and a minimum elongation of 12 percent at break, or a minimum longitudinal tensile strength of 240 pounds per inch of width and a minimum elongation of 3 percent at break. The tape shall have sufficient transverse strength to prevent raveling or separation of the filaments. Tape shall have an adhesion of 18 ounces per inch of width minimum when tested according to acceptable methods. Tape shall adhere immediately and firmly to fiberboard surface when applied with hand pressure in the temperature range of 0° to 120° F. No solvent or heat shall be necessary to activate the adhesive.

Subpart I—Specifications for Tank Cars

1. Amend entire § 78.261 (23 F.R. 7655, Oct. 3, 1958) (21 F.R. 4566, 4567, June 26, 1956) to read as follows:

§ 78.261 Specifications for interior heater systems.

(a) *Piping systems.* The interior heater system covered by this specification shall comprise a system of continuous lengths of pipe or tubing of circular cross section to an approved material standard. Interior heater systems employing the use of a cross section other than a circular pipe or tubing section may be used provided the design of such system has been approved by the Committee on Tank Cars, Association of American Railroads.

(b) *Material.*

(1) Interior heater systems shall be made of approved materials listed in subparagraphs (2), (3), and (4) of this paragraph, provided such materials are suitable for use with the lading to be carried in the tank.

(2) *Steel heater systems.* Pipe material used in heater systems shall be not less than 2-inch schedule 80 pipe or 2⅜ inch outside diameter tubing in size, with a nominal wall thickness of .175 inch.

The following material standards are approved for use in these heater systems:

AAR Specification M–111–52—Pipe, Furnace Welded, Electric Resistance Welded, Black and Hot-Dipped-Galvanized, for Special Purposes.

AAR Specification M–108–50—Boiler Tubes, Electric Resistance Welded and Seamless Steel.

ASTM Specification A–53–58T—Welded and Seamless Steel Pipe.

ASTM Specification A–83–58T—Seamless Steel Boiler Tubes.

ASTM Specification A–178–58T—Electric Resistance Welded Steel and Open-Hearth Iron Boiler Tubes.

(3) *Stainless steel heater systems.* Pipe material used shall be not less than 2-inch schedule 40S pipe or 2⅜ inch outside diameter tubing in size, with a nominal minimum wall thickness of .154 inch. The following material standards are approved for use in these heater systems:

ASTM Specification A–312–58T—Seamless and Welded Austenitic Stainless Steel Pipe.

ASTM Specification A–269–58T—Seamless and Welded Austenitic Stainless Steel Tubing.

(4) *Aluminum alloy heater systems.* Pipe materials used for heater systems shall be not less than 2-inch schedule 80 or 2⅜ inch outside diameter tubing with a nominal minimum wall thickness of .218 inch. The following material standards are approved for use in these heater systems:

ASTM Specification B–210–58T—Aluminum Alloy Drawn Seamless Tubes.

ASTM Specification B–235–58T—Aluminum Alloy Extruded Tubes.

ASTM Specification B–241–58T—Aluminum Alloy Pipe.

(5) *Heater systems using other materials.* Heater systems using materials other than those specified in paragraphs (b) (2), (b) (3), and (b) (4), may be used provided the design of such heater systems, including data describing the adequacy of the material for use with the intended lading, is submitted to and approved by the Committee on Tank Cars, Association of American Railroads.

(c) *Joints and fittings.* Butt joints in the heater system shall preferably be made by welding. Bolted welding flanges may be used to join pipe sections together when joining by welding is not feasible or to facilitate the application of interior tank linings or to facilitate cleaning operations.

(d) *Return bends.* Return bends shall be forged or made by bending the pipe. Cast, forged or fabricated manifolds of approved design are permissible.

(e) *Application to tank.* All piping shall be properly secured to permit necessary expansion and contraction.

(f) *Inlets and outlets.* (1) Inlets and outlets shall be so located in any portion of dome, shell or heads of tanks or steam jacketed outlet as to afford proper self-drainage of the entire system.

(2) When ends of steam coils are not attached to manifold or steam jacketed outlet chamber they shall be attached to pads or reinforcements. Pads or reinforcements shall be attached to tank or dome to comply with specifications for type of car involved. Outside pipe connections to steam coils shall not be an integral part of the interior coils and shall be screwed or welded, or both, into outside of pads or reinforcements.

(3) Both inlets and outlets of heater pipes shall be equipped with valve cock, cap or plug. Caps and plugs shall be secured by chain.

(g) *Compartment and multiple-tank cars.* The heater systems for each compartment of a compartment tank or each tank of a multiple tank car shall be treated as a separate tank and comply with the requirements contained herein.

(h) *Tests and retests.* (1) The heater system of each tank shall be tested with hydrostatic pressure and shall be tight at 200 pounds per square inch.

(2) Similar tests shall be made after renewals of any part of heater system.

(3) Each time tanks having heater systems are retested as prescribed in the specifications therefor, the heater system shall also be retested and be tight at a hydrostatic pressure of 200 pounds per square inch.

(i) *Reports.* Reports shall be made on Certificate of Construction when heater systems are installed, including report of initial test. Reports of retest of tanks shall include retests of heater systems.

(j) *Marking.* Tanks having interior heater systems shall be stenciled in accordance with Figure 1, Appendix C of A.A.R. Specifications for Tank Cars.

2. In § 78.265–21 amend paragraph (a) (21 F.R. 4569, June 26, 1956) to read as follows:

§ 78.265 Specification ICC–103; riveted steel tanks to be mounted on or forming part of a car.

§ 78.265–21 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

2. In § 78.266–20 amend paragraph (a) (21 F.R. 4571; June 26, 1956) to read as follows:

§ 78.266 Specification ICC–103A; riveted steel tanks to be mounted on or forming part of a car.

§ 78.266–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechnical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

3. In § 78.267–20 amend paragraph (a) (21 F.R. 4573, June 26, 1956) to read as follows:

§ 78.267 Specification ICC–103B; rubber-lined riveted steel tanks to be mounted on or forming part of a car.

§ 78.267–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

4. In § 78.269–21 amend paragraph (a) (21 F.R. 4576, June 26, 1956) to read as follows:

§ 78.269 Specification ICC–104; lagged riveted steel tanks to be mounted on or forming part of a car.

§ 78.269–21 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

5. In § 78.270–20 amend paragraph (a) (21 F.R. 4578, June 26, 1956) to read as follows:

§ 78.270 Specification ICC–105A100; lagged riveted steel tanks to be mounted on or forming part of a car.

§ 78.270–20 Reports.

(a) Before a tank car is placed in service, the party asembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the

alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

6. In § 78.276 amend the heading and paragraph (a); in § 78.276–1 amend paragraph (a); in § 78.276–2 add paragraph (a) (1); in § 78.276–3 amend paragraph (a); in § 78.276–6 add paragraph (b); and in § 78.276–15 amend paragraph (a) (1) (21 F.R. 4580, 4581, June 26, 1956) to read as follows:

§ 78.276 Specification ICC–106A800; forged lap-welded steel tanks, or ICC–106A800–X; forge-welded steel tanks with fusion-welded longitudinal barrel sections or ICC–106A800–X–NC; nickel-clad, forge-welded steel tanks with fusion-welded longitudinal barrel sections, to be mounted on a car.

(a) Wherever the word "approved" is used in this specification it means approval by the Association of American Railroads Committee on Tank Cars as prescribed in § 78.259, Application for approval, (a), (b), (c), and (d).

§ 78.276–1 Type and general requirements.

(a) Tanks built under this specification must be cylindrical with heads designed convex inward. All openings must be located in the heads. Tanks must be securely attached to car structure in such a manner that they may be removed for filling by the consignor and emptying by the consignee. Each tank must have a capacity of at least 1,600 pounds and not more than 2,600 pounds of water. When tanks are fabricated of plates clad with nickel, each tank must have a capacity of at least 1,500 pounds of water.

§ 78.276–2 Thickness of plates.

(a) * * *

(1) The wall thickness of nickel clad tanks must be at least $^{23}/_{32}$ inch and must be such that at the test pressure the calculated fiber stress in wall of tank will not be in excess of that shown in § 78.276–2(a) and as calculated by the formula shown in § 78.276–2(a).

§ 78.276–3 Material.

(a) All plates for tank must be made of uniform open-hearth steel of good welding quality, free from cracks, laminations, or other defects injurious to the finished tank, and have an elastic limit of not more than 45,000 pounds per square inch and an elongation of at least 20 percent in 8 inches; a test specimen must also bend cold through 180 degrees flat on itself without cracking on the outside of the bent portion; the tensile and bend test specimens must be taken from the finished rolled material, and there must be at least one tensile test and one bend test on specimens from each heat. Chemical analysis must show maximum content percent not greater than as follows:

Carbon	0.20
Phosphorus	0.04
Sulphur	0.05

Plates also may be clad with nickel.

§ 78.276–6 Heat treatment.

* * * * *

(b) Nickel clad tanks shall be stress relieved in accordance with paragraph W–15.01, AAR Welding Code, Appendix W.

§ 78.276–15 Marking.

(a) * * *

(1) When longitudinal seam is water gas lap-welded, the mark must be ICC–106A800. When longitudinal seam is fusion-welded the mark must be ICC–106A800–X. When tank is fabricated of nickel clad plates with longitudinal fusion-welded seam, the mark must be ICC–106A800–X–NC.

* * * * *

7. In § 78.280–4 add paragraph (h); in § 78.280–23 amend paragraph (a) (21 F.R. 4586, 4588, June 26, 1956) to read as follows:

§ 78.280 Specification ICC–103–W; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.280–4 Thickness of plates.

* * * * *

(h) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.280–23 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

8. In § 78.281–4 add paragraph (g); in § 78.281–22 amend paragraph (a) (21 F.R. 4589, 4590, June 26, 1956) to read as follows:

§ 78.281 Specification ICC–103A–W; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.281–4 Thickness of plates.

* * * * *

(g) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.281–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

9. In § 78.282–4 add paragraph (g); in § 78.282–21 amend paragraph (a) (21 F.R. 4591, 4592, June 26, 1956) to read as follows:

§ 78.282 Specification ICC–103B–W; rubber-lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.282–4 Thickness of plates.

* * * * *

(g) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder

shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.282–21 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

10. In § 78.283–4 add paragraph (f); in § 78.283–22 amend paragraph (a) (21 F.R. 4593, 4594, June 26, 1956) to read as follows:

§ 78.283 Specification ICC–103C–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.283–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.283–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

11. In § 78.284–4 add paragraph (h); in § 78.284–23 amend paragraph (a) (21 F.R. 4595, 4597, June 26, 1956) to read as follows:

§ 78.284 Specification ICC–104–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.284–4 Thickness of plates.

* * * * *

(h) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.284–23 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

12. In § 78.285–1 amend paragraph (a); in § 78.285–19 amend paragraph (a) (21 F.R. 4597, 4599, June 26, 1956) to read as follows:

§ 78.285 Specification ICC–105A100–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.285–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.285–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

13. In § 78.286–1 amend paragraph (a); in § 78.286–19 amend paragraph (a) (21 F.R. 4599, 4600, June 26, 1956) to read as follows:

§ 78.286 Specification ICC–105A300–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.286–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling, and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.286–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application,

showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

14. In § 78.287–1 amend paragraph (a); in § 78.287–19 amend paragraph (a) (21 F.R. 4600, 4602, June 26, 1956) to read as follows:

§ 78.287 Specification ICC–105A400–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.287–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling, and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.287–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

15. In § 78.288–1 amend paragraph (a); in § 78.288–19 amend paragraph (a) (21 F.R. 4602, 4604, June 26, 1956) to read as follows:

§ 78.288 Specification ICC–105A500–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.288–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.288–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

16. In § 78.289–1 amend paragraph (a); in § 78.289–19 amend paragraph (a) (21 F.R. 4604, 4606, June 26, 1956) to read as follows:

§ 78.289 Specification ICC–105A600–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.289–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.289–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

17. Add § 78.290 (21 F.R. 4606, June 26 1956) to read as follows:

§ 78.290 Specification ICC–112A500–W; fusion-welded steel tanks to be mounted on or forming part of a car.

(a) Wherever the word "approved" is used in this specification it means approval by the Association of American Railroads Committee on Tank Cars as prescribed in § 78.259 Application for approval, (a), (b), (c), and (d).

§ 78.290–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.290–2 Lagging.

(a) Not a specification requirement.

(b) In lieu of lagging, at least the upper two-thirds of the tank car tank shall be painted with a light-reflective paint for the finish coat. Manway nozzle and all appurtenances in contact with this area of the tank shall also be painted with a light-reflective paint for the finish coat.

§ 78.290–3 Bursting pressure.

(a) The calculated bursting pressure, based on the lowest tensile strength of the plate and efficiency of the longitudinal welded joint, must be at least 1,250 pounds per square inch.

§ 78.290–4 Thickness of plates.

(a) The wall thickness in the cylindrical portion of the tank and tank heads must be calculated by the following formula, but in no case shall the wall thickness be less than that specified in § 78.290–4(b):

$$t=\frac{Pd}{2SE}$$

where

t = thickness in inches of thinnest plate;
P = calculated bursting pressure in pounds per square inch;
d = inside diameter in inches;
S = minimum ultimate tensile strength in pounds per square inch;
E = efficiency of longitudinal welded joint = 90 percent.

(b) The minimum thickness of plates must be $^{11}/_{16}$ inch.

(c) The minimum thickness of clad plates, where cladding material has physical properties at least equal to that of the base plate prescribed in § 78.290–6(a), must be as prescribed in § 78.290–4(b). Where the cladding material does not have physical properties at least equal to that of the base plate prescribed in § 78.290–6(a), minimum thickness of base plate must be as prescribed in § 78.290–4(b).

§ 78.290–5 Manway nozzle opening.

(a) Opening in tank for manway nozzle must be reinforced in an approved manner.

§ 78.290–6 Material.

(a) All plates for tank and manway nozzle must be made of open-hearth boiler-plate flange or firebox quality steel to an approved specification, the carbon content of which shall not exceed 0.31 percent. These plates may also be clad with other metals, such as nickel.

(b) All castings used for fittings or attachments to tank must be made of material to an approved specification. The use of cast iron is prohibited.

(c) All external projections must be made of materials specified herein.

§ 78.290–7 Tank heads.

(a) The tank head shape shall be an ellipsoid of revolution in which the major axis shall equal the diameter of the shell and the minor axis shall be one-half the major axis.

§ 78.290–8 Welding.

(a) All joints must be fusion welded by a process which investigation and laboratory tests by the Mechanical Division

of the Association of American Railroads have proved will produce satisfactory results. Fusion welding to be performed by fabricators certified by the Association of American Railroads as qualified to meet the requirements of this specification. All joints must be fabricated by means of fusion welding in accordance with the requirements of AAR Welding Code, Appendix W.

§ 78.290–9 Stress relieving.

(a) All welding of the tank shell and of attachments welded directly thereto, must be stress relieved as a unit.

§ 78.290–10 Tank mounting.

(a) The manner in which the tank is supported on and securely attached to the car structure must be approved.

(b) The use of rivets as a means of securing the anchor to tank is prohibited.

§ 78.290–11 Manway nozzle, cover and protective housing.

(a) Manway nozzle must be of forged or rolled steel at least 18 inches inside diameter. Manway nozzle must be of approved design and attached to tank by fusion welding. Fusion welding for securing this attachment in place must be of the double-welded butt joint or double full-fillet lap joint type.

(b) Manway cover must be of forged or rolled steel at least 2¼ inches thick, machined to approved dimensions. Manway cover must be attached to manway nozzle by through or stud bolts not entering tank.

(c) The shearing value of the bolts attaching protective housing to manway cover must not exceed 70 percent of the shearing value of bolts attaching manway cover to manway nozzle.

(d) All joints between manway cover and manway nozzle, and between manway cover and valves or other appurtenances mounted thereon, must be made tight against vapor pressure.

(e) Protective housing of cast or fabricated steel must be bolted to manway cover. Housing must be equipped with a suitable metal cover that can be securely closed. Housing cover on tanks used for the transportation of liquefied flammable gases must be provided with an opening equipped with an approved weather proof covering and having an area at least equal to the total safety valve discharge area. Housing cover must have suitable stop to prevent cover striking loading and unloading connections and be hinged on one side only with approved riveted pin or rod with nuts and cotters. Opening in wall of housing must be equipped with screw plugs or other closures.

§ 78.290–12 Venting, loading and unloading valves, gauging and sampling device and thermometer well.

(a) Venting, loading and unloading valves must be of approved type, made of metal not subject to rapid deterioration by lading, and must withstand a pressure of 500 pounds per square inch without leakage. The valves must be directly bolted to seatings on manway cover. Pipe connections of valves must be closed with approved screw plugs chained or otherwise fastened to prevent misplacement.

(b) The interior pipes of the loading and unloading valves, except as prescribed in § 78.290–12(d), may be equipped with excess flow valves of approved design.

(c) Gauging device, sampling valve and thermometer well are not specification requirements. When used, they must be of approved design, made of metal not subject to rapid deterioration by lading, and must withstand a pressure of 500 pounds per square inch without leakage. Interior pipes of the gauging device and sampling valve, except as prescribed in § 78.290–12(d), may be equipped with excess flow valves of approved design. Interior pipes of thermometer well must be anchored in an approved manner to prevent breakage due to vibration. The thermometer well must be closed by an approved valve attached close to manway cover and closed by a screw plug. Other approved arrangements that permit testing thermometer well for leaks without complete removal of the closure may be used.

(d) Tanks used for the transportation of liquefied flammable gases must have the interior pipes of the loading and unloading valves, gauging device, and sampling valve equipped with excess flow valves of approved design.

(e) Tanks used for the transportation of chlorine must have the interior pipes of the liquid lines equipped with excess flow valves of an approved design.

(f) An excess flow valve, as referred to in this specification, is a device which closes automatically against the outward flow of the contents of the tank such as may be encountered in case the external closure valve is broken off or removed during transit. Excess flow valves may be designed with a by-pass to allow equalization of pressures.

§ 78.290–13 Safety valves.

(a) The tank must be equipped with one or more safety valves of an approved design, made of metal not subject to rapid deterioration by lading and mounted on manway cover. The total valve discharge capacity must be sufficient to prevent building up pressure in tank in excess of 412.5 pounds per square inch.

(b) The safety valve must be set for a start-to-discharge pressure of 375 pounds per square inch except as provided in § 78.290–13(c). (For tolerance see § 78.290–17(a).)

(c) For tanks used in the transportation of chlorine having a safety valve used in combination with a breaking pin device, the breaking pin device must be designed to fail at a pressure of 375 pounds per square inch. The safety valve must be set for a start to discharge pressure of 360 pounds per square inch.

§ 78.290–14 Fixtures, reinforcements, and attachments not otherwise specified.

(a) Attachments, other than anchorage, interior pipe bracing, and those mounted on manway cover, are prohibited.

§ 78.290–15 Closures for openings.

(a) Plugs must be of approved type, with standard pipe thread and of metal not subject to rapid deterioration by lading.

§ 78.290–16 Tests of tanks.

(a) Each tank must be tested, after anchorage is applied, by completely filling tank and manway nozzle with water, or other liquid of similar viscosity, having a temperature which must not exceed 100 degrees Fahrenheit during test, and applying a pressure of 500 pounds per square inch. The tank must hold the prescribed pressure for at least 10 minutes without leakage or evidence of distress.

(b) Calking of welded joints to stop leaks developed during the foregoing tests prohibited. Repairs in welded joints must be made as prescribed in § 78.290–8(a).

§ 78.290–17 Tests of safety valves.

(a) Each valve must be tested by air or gas before being put into service. The valve must start to discharge at the pressure prescribed in § 78.290–13 (b) or (c) with a tolerance of plus or minus 3 percent, and be vapor tight at 300 pounds per square inch.

§ 78.290–18 Marking.

(a) Each tank must be marked, thus certifying that the tank complies with all the requirements of this specification. These marks must be as follows:

(1) ICC–112A500–W in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. If tanks are fabricated from ASTM A–212 Grades A or B steel, the specification number of the material must also be stamped in letters and figures at least ⅜ inch high into the metal near the center of both outside heads of the tank by the tank builder. ICC–112A500–W must also be stenciled on the tank in letters and figures at least 2 inches high by the party assembling the completed car.

(2) Initials of tank builder and date of original test of tank in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal immediately below the stamped marks specified in § 78.290–18(a)(1).

(3) Initials of company and date of additional tests performed by the party assembling the completed car, in those cases where the tank builder does not complete the fabrication of tank, in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal immediately below the stamped marks specified in § 78.290–18(a)(2) by the party assembling the completed car. These marks must be stenciled on the tank in letters and figures at least 2 inches high immediately below the stenciled mark specified in § 78.290–18(a)(1) by the party assembling the completed car.

(4) Date on which the tank was last tested, pressure to which tested, place where test was made, and by whom stenciled on the tank.

(5) Date on which the safety valves were last tested, pressure to which tested, place where test was made, and by whom stenciled on the tank.

(6) Water capacity in pounds stamped plainly and permanently in letters and figures at least ⅜ inch high into the metal of the tank immediately below the mark specified in § 78.290–18(a) (2) and (3). This mark must also be stenciled on the tank immediately below the dome platform and either directly behind or within 3 feet of the right or left side of ladder or ladders, if there is a ladder on each side of the tank, in letters and figures at least 2 inches high as follows:

WATER CAPACITY
000000 POUNDS

(7) When a tank car and its appurtenances are designed and authorized for the transportation of a particular commodity only, the name of that commodity followed by the word "only", or such other wording as may be required to indicate the limits of usage of the car, must be stenciled on each side of the tank in letters at least one inch high, immediately above the stenciled mark specified in § 78.290–18(a) (1).

(8) Tanks made of clad plates must be stenciled on the tank, "(naming material) _____ clad tank." Lined tanks must be stenciled on the tank, "(naming material) _____ lined tank." These marks must be stenciled in letters at least 2 inches high, immediately above the stenciled mark specified in § 78.290–18 (a) (7).

§ 78.290–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of welded repairs to, alterations of or additions to tanks or equipment from original design and construction, all of which must be approved, there must be furnished to the same parties a report in detail of the welded repairs, alterations or additions made to each tank covered by a particular application, showing the initials of each tank involved. Reports of retests must be rendered to the car owner.

18. In § 78.291–4 add paragraph (f); in § 78.291–22 amend paragraph (a) (22 F.R. 4797, July 9, 1957) (21 F.R. 4608, June 26, 1956) to read as follows:

§ 78.291 Specification ICC–103AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.291–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.291–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

19. In § 78.292–4 add paragraph (f); in § 78.292–22 amend paragraph (a) (22 F.R. 4798, July 9, 1957) (21 F.R. 4610, June 26, 1956) to read as follows:

§ 78.292 Specification ICC–103A–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.292–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.292–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

20. In § 78.294–1 amend paragraph (a); in § 78.294–19 amend paragraph (a) (21 F.R. 4613, 4614, June 26, 1956) to read as follows:

§ 78.294 Specification ICC–105A100–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of car.

§ 78.294–1 Type.

(a) Tanks built under this specification must be cylindrical, with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.294–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

21. In § 78.296–22 amend paragraph (a) (21 F.R. 4618, June 26, 1956) to read as follows:

§ 78.296 Specification ICC–103B100–W; tubber-lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.296–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements

of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

22. In § 78.297–4 add paragraph (f); in § 78.297–22 amend paragraph (a) (21 F.R. 4619, 4621, June 26, 1956) to read as follows:

§ 78.297 Specification ICC–103D–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.297–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.297–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

23. In § 78.298–4 add paragraph (f); in § 78.298–22 amend paragraph (a) (21 F.R. 4623, June 26, 1956) to read as follows:

§ 78.298 Specification ICC–103E–W; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.298–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.298–22 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

24. In § 78.299–4 add paragraph (f); in § 78.299–21 amend paragraph (a) (21 F.R. 4623, 4625, June 26, 1956) to read as follows:

§ 78.299 Specification ICC–103A–N–W; fusion-welded nickel or nickel alloy tanks to be mounted on or forming part of a car.

§ 78.299–4 Thickness of plates.

* * * * *

(f) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.299–21 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

25. In § 78.300–1 amend paragraph (a); in § 78.300–19 amend paragraph (a) (21 F.R. 4625, 4626, June 26, 1956) to read as follows:

§ 78.300 Specification ICC–105A300–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.300–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.300–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations, or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

26. In § 78.301–20 amend paragraph (a) (21 F.R. 4628, June 26, 1956) to read as follows:

§ 78.301 Specification ICC–109A300–W; fusion-welded steel tanks to be mounted on or forming a part of a car.

§ 78.301–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showng the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

27. In § 78.302–20 amend paragraph (a) (22 F.R. 2237, April 4, 1957) to read as follows:

§ 78.302 Specification ICC–109A100–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.302–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

28. In § 78.303–3 add paragraph (d); in § 78.303–12 amend paragraph (a) (22 F.R. 4801, July 9, 1957) to read as follows:

§ 78.303 Specification ICC–111A100–W–1; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.303–3 Thickness of plates.

* * * * *

(d) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.303–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

29. In § 78.304–3 add paragraph (d); in § 78.304–12 amend paragraph (a) (22 F.R. 4802, 4803, July 9, 1957) to read as follows:

§ 78.304 Specification ICC–111A–100–W–2; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.304–3 Thickness of plates.

* * * * *

(d) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.304–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

30. In § 78.305–3 add paragraph (d); in § 78.305–12 amend paragraph (a) (22 F.R. 4805, July 9, 1957) to read as follows:

§ 78.305 Specification ICC–111A100–W–3; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.305–3 Thickness of plates.

* * * * *

(d) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.305–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

31. In § 78.306–3 add paragraph (d); in § 78.306–12 amend paragraph (a) (22 F.R. 4807, July 9, 1957) to read as follows:

§ 78.306 Specification ICC–111A100–W–4; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.306–3 Thickness of plates.

* * * * *

(d) When the interior of the tank is divided into compartments by construct-

ing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.306–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

32. In § 78.307–1 amend paragraph (a); in § 78.307–19 amend paragraph (a) (22 F.R. 4807, 4809, July 9, 1957) to read as follows:

§ 78.307 Specification ICC–105A200–W; lagged fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.307–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank prohibited except as provided in Part 73 of this chapter.

§ 78.307–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

33. In § 78.308–1 amend paragraph (a); in § 78.308–19 amend paragraph (a) (22 F.R. 4809, 4810, July 9, 1957) to read as follows:

§ 78.308 Specification ICC–105A200–AL–W; lagged fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.308–1 Type.

(a) Tanks built under this specification must be cylindrical, with heads designed convex outward. The tank must be provided with a manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.308–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

34. In § 78.309–3 add paragraph (d); in § 78.309–12 amend paragraph (a); in § 78.309–18 amend paragraph (a); in § 78.309–20 amend paragraph (b) (15 F.R. 8523, Dec. 2, 1950) (23 F.R. 7663, Oct. 3, 1958) (24 F.R. 8064, Oct. 6, 1959) to read as follows:

§ 78.309 Specification ICC–111A100–W–5; acid resistant-lined fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.309–3 Thickness of plates.

* * * * *

(d) When the interior of the tank is divided into compartments by constructing each compartment as a separate tank, these tanks shall be joined together by a cylinder made of plate, having a thickness not less than that required for the tank shell and applied to the outside surface of tank head flanges. The cylinder shall fit the straight flange portion of the compartment tank head tightly. The cylinder shall contact the head flange for a distance of at least two times the plate thickness, or a minimum of 1 inch, whichever is greater. The cylinder shall be joined to the head flange by a full fillet weld. Distance from head seam to cylinder shall not be less than 1½ inches or three times the plate thickness, whichever is greater. Voids created by the space between heads of tanks joined together to form a compartment tank must be provided with a tapped drain hole at their lowest point and a tapped hole at top of tank. The top hole must be closed and the bottom hole may be closed with solid pipe plugs not less than ¾ inch nor more than 1½ inches having standard pipe threads.

§ 78.309–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

* * * * *

§ 78.309–18 Gauging device.

(a) Outage for these tanks must be provided in the tank shell; therefore, an outage scale, visible from manway when cover is open, or other approved means, must be provided. All surfaces of attachments exposed to the lading must be covered with an approved acid resistant material as prescribed in § 78.309–3(c) and § 78.309–5(d). Attachments made of metal not affected by the lading need not be covered.

§ 78.309–20 Safety vents.

* * * * *

(b) Each tank, or compartment thereof, must be equipped with one safety vent of approved material and if of metal, must be lined with an approved acid resistant material at least ⅛ inch in thickness, having an inside diameter of at least 1¾ inches after lining, closed with a frangible disc of lead or suitable material of a thickness that will rupture at not more than 75 pounds per square inch. Means for holding disc in place must be such as to prevent distortion or damage to disc when applied. Safety vent closure must be chained or otherwise fastened to prevent misplacement.

* * * * *

35. In § 78.310–12 amend paragraph (a); in § 78.310–17 amend paragraphs (a) and (c); in § 78.310–20 amend paragraph (c) and add paragraph (d) (24 F.R. 3605, May 5, 1959) (15 F.R. 8523, Dec. 2, 1950) to read as follows:

§ 78.310 Specification ICC–111A60–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.310–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner,

Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

§ 78.310–17 Venting, loading and unloading devices.

(a) Not specification requirements. When installed, these devices or fittings must be of an approved design which will prevent interchange with any other fitting on the tank, made of materials not subject to rapid deterioration by the lading, and be tightly closed.

* * * * *

(c) When the characteristics of the commodity for which the tank car is authorized are such that these devices must be equipped with valves or fittings to permit the loading and unloading of the contents of the tank, these devices, including valves, must be of an approved design, made of materials not subject to rapid deterioration by the lading, and be provided with a protective housing or equivalent. Provision must be made for closing pipe connections of valves.

§ 78.310–20 Safety valves.

* * * * *

(c) Tanks used for the transportation of corrosive liquids, flammable solids, oxidizing materials, or poisonous liquids or solids class B, need not be equipped with safety valves; but if not so equipped, must have one safety vent at least 1¾ inches inside diameter, of an approved design which will prevent interchange with fixtures prescribed in § 78.310–17 (a), made of material not subject to rapid deterioration by the lading, closed with a frangible disc of lead or other approved material, of a thickness that will rupture at not more than 45 pounds per square inch. Means for holding disc in place must be such as to prevent distortion or damage to disc when applied. Safety vent closure must be chained or otherwise fastened to prevent misplacement. All tanks equipped with vents must be stenciled "NOT FOR FLAMMABLE LIQUIDS."

(d) Each tank or compartment thereof may be equipped with one separate air connection of an approved design which will prevent interchange with any fixture prescribed in § 78.310–17(a), made of material not subject to rapid deterioration by the lading, and be tightly closed and chained to prevent misplacement. Valves, if applied, must be of approved design, made of material not subject to rapid deterioration by the lading and be provided with a protective housing. Provisions must be made for closing pipe connections of valves.

36. In § 78.311–12 amend paragraph (a) (24 F.R. 3606, 3607, May 5, 1959) to read as follows:

§ 78.311 Specification ICC–111A100–W–6; fusion-welded alloy steel tanks to be mounted on or forming part of a car.

§ 78.311–12 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

37. In § 78.312–1 amend paragraph (a); in § 78.312–19 amend paragraph (a) (22 F.R. 4811, 4812, July 9, 1957) to read as follows:

§ 78.312 Specification ICC–112A400–W; fusion-welded steel tanks to be mounted on or forming part of a car.

§ 78.312–1 Type.

(a) Tanks built under this specification must be cylindrical with heads designed convex outward. The tank must be provided with manway nozzle and cover on top of the tank of sufficient diameter to permit access to the interior of the tank and to provide for the proper mounting of venting, loading, unloading, sampling and safety valves, gauging device, thermometer well, and a protective housing on the cover. Other openings in the tank are prohibited except as provided in Part 73 of this chapter.

§ 78.312–19 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

38. In § 78.313–20 amend paragraph (a) (23 F.R. 2335, April 10, 1958) to read as follows:

§ 78.313 Specification ICC–109A200 AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.313–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

39. In § 78.314–20 amend paragraph (a) (22 F.R. 4814, July 9, 1957) to read as follows:

§ 78.314 Specification ICC–109A300–AL–W; fusion-welded aluminum tanks to be mounted on or forming part of a car.

§ 78.314–20 Reports.

(a) Before a tank car is placed in service, the party assembling the completed car must furnish to car owner, Bureau of Explosives, and the Secretary, Mechanical Division, Association of American Railroads, a report in approved form certifying that the tank and its equipment comply with all the requirements of this specification. In case of alterations of or additions to tanks or equipment from original design and construction, there must be furnished to the same parties a report in detail of the alterations or additions made to each tank covered by a particular application, showing the initials and number of each tank involved. Reports of retests must be rendered to the car owner.

[F.R. Doc. 60–3300; Filed, Apr. 11, 1960; 8:47 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 4—POLITICAL ACTIVITY

Revision of Part

Part 4 is revised as set out below:

PROCEDURE, POLITICAL ACTIVITY CASES

Sec.
4.308 Waiver of hearing.
4.309 Final decision.

AUTHORITY: §§ 4.101 to 4.309 issued under R.S. 1753, sec. 2, 22 Stat. 403, as amended, 5 U.S.C. 631, 633. E.O. 10577, 19 F.R. 7521; 3 CFR 1954 Supp. Interpret or apply sec. 9, 53 Stat. 1148, as amended, sec. 14, 58 Stat. 390, as amended; 5 U.S.C. 118i, 863.

PROCEDURE, POLITICAL ACTIVITY CASES

§ 4.101 Purpose.

The regulations in this part provide the procedures to be followed in determining whether employees in the executive branch of the Federal Government have engaged in political activities prohibited by section 9 of the Hatch Political Activities Act (5 U.S.C. 118i) or whether employees in the competitive civil service of the Federal Government have engaged in political activities prohibited by Civil Service Rule IV (hereinafter referred to as the "Act" and the "Rule").

§ 4.102 Penalties.

(a) The penalties for violation of section 9(a) of the Hatch Political Activities Act are set forth in section 9(b) of the statute and must be imposed. Penalties for violations of Civil Service Rule IV will be imposed in accordance with the provisions of the Hatch Political Activities Act.

(b) An officer or employee (hereinafter comprehended within the term "employee") removed for violation of the Act or Rule may not be employed again in any position the salary or compensation of which is payable under the same appropriation as the position from which removed. In addition, in each case involving a finding that a Federal employee has engaged in prohibited political activity, the Commission may consider the matter from a suitability standpoint and may establish a definite period during which that employee is debarred from employment in the competitive service.

(c) An employee suspended at the direction of the Commission for violation of the Act or Rule is not eligible for employment in other Federal positions during the period of his suspension.

Subpart A—Procedure, Competitive Service

§ 4.201 Investigation.

(a) Investigation of allegations of prohibited political activity on the part of an employee in the competitive service shall be conducted without a pledge of confidence. The agency where the individual is employed shall be notified of the investigation and shall be given an opportunity to participate.

(b) During the course of the investigation, the employee shall be afforded an opportunity to make a statement concerning the evidence upon which the political-activity allegations are based and to furnish the names of the witnesses he wishes to have interviewed.

§ 4.202 Notification of proposed action; charges.

(a) The General Counsel of the Commission may close any case when he decides, after reviewing the report of investigation, that a violation of the Act and Rule has not been established. The employee and the employing agency shall be notified of the General Counsel's decision.

(b) The General Counsel shall notify the employee in writing, by registered mail, return receipt requested, when he decides that the report of investigation indicates that the Act and Rule have been violated. The notice shall set forth any and all charges against the employee, specifically and in detail, and shall inform him of the penalty under the Act. Adverse personnel action against the employee may not be taken until after thirty (30) days from the receipt of the notice. The employee must be retained in an active-duty status during the notice period.

§ 4.203 Employee's answer.

The employee shall be allowed fifteen (15) days from the date of receipt of the notice and charges to submit an answer. He may answer personally or in writing, or both personally and in writing, and may furnish affidavits in support of his answer.

§ 4.204 Initial decision.

When the General Counsel decides after reviewing the employee's answer and the affidavits submitted therewith that a violation of the Act and Rule has been established, he shall so notify the employee stating his reasons therefor, and shall notify the employee of his right to a hearing on the charges.

§ 4.205 Hearing; procedure.

(a) The hearing shall be held at such time and place as the Commission may determine, giving due consideration to the request of the employee as to time and place. Notice of hearing shall be given at least ten (10) calendar days in advance of the date fixed for the hearing.

(b) All testimony shall be under oath or affirmation. The report of investigation shall be made a part of the record at the hearing. All statements, affidavits and documents which are to be considered as evidence shall be available for review by the employee or his representative.

(c) The employee may be represented by counsel of his own choosing. The employee and the Counsel of the Commission may produce witnesses, who shall be subject to cross examination. Each shall be responsible for securing the attendance of his witnesses. (There is no power of subpoena in these cases.)

(d) The proceedings at the hearing shall be reported stenographically unless by stipulation the parties agree to a summary of facts. If the proceedings are not taken by a reporter on behalf of the Commission, a summary of the testimony shall be prepared by the examiner or in accordance with directions given by him, to which the parties may file written exceptions. The summary and the exceptions, if any, shall be certified by the examiner and shall become part of the record. It shall be within the discretion of the examiner to permit and fix the time for the filing of briefs.

(e) The examiner shall submit the record and the report of the hearing to the Commissioners (through the Commission's Chief Hearing Examiner in cases in which the latter did not preside at the hearing) with his recommended decision as to the violation found by the General Counsel and the penalty to be imposed, if any.

§ 4.206 Waiver of hearing.

If the employee waives a hearing, the case shall be submitted, on the record, to the Chief Hearing Examiner for his recommendation to the Commission as to violation and the penalty to be imposed, if any.

§ 4.207 Final decision.

The final decision shall be made by the Commissioners. The decision of the Commissioners shall be sent to the employee and the employing agency. If the decision is adverse to the employee, it shall set forth the reasons on which it is based, shall notify the employee of the penalty, and shall be sent to him by registered mail, return receipt requested. It shall be mandatory upon the employing agency to take action in accordance with the decision.

Subpart B—Procedure, Excepted Service

§ 4.301 Investigation.

Investigation of allegations of prohibited political activity on the part of an employee in the excepted service shall be conducted by the employing agency without a pledge of confidence.

§ 4.302 Charge and answer.

Where the investigation indicates that a violation has occurred, the employing agency shall issue to the employee a notice of proposed removal. This notice shall set forth the alleged political activity specifically and in detail. The notice shall be sent to the employee by registered mail, return receipt requested. The employee shall be given not less than fifteen (15) calendar days after the date of his receipt of the notice to reply thereto in writing. No disciplinary action based on the charges contained in the notice may be taken within thirty (30) calendar days after his receipt of the notice.

§ 4.303 Agency decision.

On receipt of his reply, or if the employee fails to reply within the time set, the employing agency shall make the decision on the entire record and notify the employee thereof by registered mail, return receipt requested. If the decision is adverse to the employee the notice of decision shall set forth, specifically and in detail, the charges on which it is based and the effective date of his proposed removal. All employees whose removal is found warranted must be advised in the notice of decision of the right to appeal to the Commission, of the time within which his appeal must be filed, and of the place where the appeal must be filed.

§ 4.304 Appeal.

An employee may appeal to the Commission from a decision of the employing

agency that his removal is warranted for violation of the Act not later than fifteen (15) calendar days after his receipt of the decision. The Commission, in its discretion, may extend this time upon a showing that the employee was unable, through circumstances beyond his control, to file his appeal within the time set. The appeal shall be in writing, addressed to the U.S. Civil Service Commission, Washington 25, D.C., and shall state whether the employee wishes a hearing.

§ 4.305 Retention of employee pending decision on appeal.

If the employee takes a timely appeal he shall not be removed but shall be retained in an active duty status until a final decision is made by the Commissioners. If no appeal is taken within the prescribed time limit the administrative decision rendered by the agency shall become final.

§ 4.306 Hearing on appeal to the Commission.

(a) Employees who appeal under § 4.304 have the right to a personal appearance, hereinafter called a hearing. The hearing shall be held at such time and place as the Commission may determine. Notice of hearing shall be given at least ten (10) calendar days in advance of the date fixed for the hearing.

(b) The hearing shall be held before an examiner designated by the Commission. All testimony shall be under oath or affirmation. Affidavits and other documentary evidence may be introduced. The report of investigation shall be made a part of the record at the hearing. All statements, affidavits and documents which are to be considered as evidence shall be available for review by the employee or his representative.

(c) The employee may be represented by counsel of his own choosing. The employee and a representative of the agency may produce witnesses, who shall be subject to cross-examination. Each shall be responsible for securing the attendance of his witnesses.

(d) The proceedings at the hearing shall be reported stenographically unless the Commission or the presiding examiner shall direct otherwise. If the proceedings are not taken by a reporter on behalf of the Commission, a summary of the testimony shall be prepared by the examiner or in accordance with directions given by him, to which the parties may file written exceptions. The summary and the exceptions, if any, shall be certified by the examiner and shall become part of the record.

(e) It shall be within the discretion of the examiner to permit and fix the time for the filing of briefs.

§ 4.307 Examiner's recommendation.

The examiner assigned shall submit the record and the report of hearing, together with a recommendation, to the Commissioners (through the Commission's Chief Hearing Examiner in cases in which the latter did not preside at the hearing).

§ 4.308 Waiver of hearing.

If the employee waives a hearing, the case shall be submitted, on the record, to the Chief Hearing Examiner for his recommendation to the Commissioners as to violation and the penalty to be imposed, if any.

§ 4.309 Final decision.

The final decision shall be made by the Commissioners. The final decision of the Commissioners shall be sent to the employee and the employing agency. It shall set forth specifically and in detail the charges on which it is based, shall notify the employee of the penalty, and shall be sent to him by registered mail, return receipt requested. It shall be mandatory upon the employing agency to comply with the decision.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant.

[F.R. Doc. 60-3276; Filed, Apr. 11, 1960; 8:45 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

[Amdt. 2]

PART 477—PRICE SUPPORT LIMITATION

Subpart—Regulations Relating to the $50,000 Limitation of Nonrecourse Price Support for the 1960 Crop of Price Supported Field Crops in Surplus Supply

HANDLING APPEALS

Basis and purpose. The purpose of this amendment is to provide for reconsideration of an application for exemption by the State administrative officer instead of a hearing before the State committee if the applicant is dissatisfied with the initial decision of the State administrative officer with respect to his application for exemption and requests reconsideration of his application within 15 days after the date of mailing the notice of the decision.

Section 477.114 of the Regulations Relating to the $50,000 Limitation of Nonrecourse Price Support for the 1960 Crop of Price Supported Field Crops in Surplus Supply is amended to read as follows:

§ 477.114 Right of appeal.

If the applicant is dissatisfied with the initial decision of the State administrative officer with respect to his application for exemption, he may, within 15 days after the date of the mailing of the notice of the decision, file a written request for reconsideration of his application by the State administrative officer, giving the reasons for the request for reconsideration and indicating whether he wishes to appear in person or be represented at a hearing on the matter. If the applicant is dissatisfied with the decision of the State administrative officer upon reconsideration of the application, he may, within 15 days after the date of the mailing of such decision file a written request for a review of his application with the Deputy Administrator, whose decision shall be final.

(Pub. Law 86-80)

Done at Washington, D.C., this 7th day of April 1960.

TRUE D. MORSE,
Acting Secretary.

[F.R. Doc. 60-3310; Filed, Apr. 11, 1960; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P.P.C. 621, 3d Revision]

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Pink Bollworm

REVISED ADMINISTRATIVE INSTRUCTIONS DESIGNATING REGULATED AREA

Pursuant to § 301.52-2 of the regulations supplemental to the pink bollworm quarantine (7 CFR 301.52-2), issued under section 8 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 161), administrative instructions appearing as 7 CFR 301.52-2a are hereby revised to read as follows:

§ 301.52-2a Administrative instructions designating regulated area, eradication area, and generally infested area under the pink bollworm quarantine.

(a) Infestations of the pink bollworm have been determined to exist, in the quarantined States, in the civil divisions and premises or parts thereof, listed below, or it has been determined that such infestation is likely to exist therein, or it is deemed necessary to regulate such localities because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. Accordingly, the localities listed are hereby designated as the pink bollworm regulated area within the meaning of the provisions in this subpart:

Arizona. Counties of Cochise, Graham, Greenlee, Maricopa, Pima, Pinal, Santa Cruz, and Yavapai.

Arkansas. All counties or parts of counties lying west of a line beginning in Ashley County at a point on the Arkansas-Louisiana boundary, 2½ miles west of the intersection of the Missouri Pacific Railway and the Arkansas-Louisiana state line, the intersection lying southwest of Wilmot, said line extending north along the east line of R. 6 W. to the intersection of the southern boundary of Lincoln County, thence due west along the southern boundary of Lincoln County and a westward prolongation of said boundary into Cleveland County to a point where it intersects State Highway 15, thence north along Highway 15 to the southern city limits of

Pine Bluff, thence along the eastern city limits to their intersection with the Arkansas River, thence northwest along the Arkansas River to the city limits of Little Rock, thence along the east corporate limits of Little Rock to their intersection with the Missouri Pacific Railway, thence northeast along said railroad to the city of Bald Knob, thence north along State Highway 11 to the southern boundary of Independence County, thence west and north along the Independence County line to its intersection with the White River, thence northwest along the White River to the Missouri state line.

That portion of the State bounded by a line beginning at the northeast corner of Clay County and extending south along the Arkansas-Missouri state line to the intersection of that line with the northern boundary of Craighead County, thence east along the Arkansas-Missouri state line to the intersection with Little River, thence south along the east side of the Big Lake National Wildlife Refuge and along the right hand chute of the Little River Floodway to the southeast corner of Craighead County, thence west along the southern boundary of Craighead County to its intersection with the St. Francis River, thence north along the St. Francis River to State Highway 18, thence west along State Highway 18 to its intersection with State Highway 135, thence north along State Highway 135 to its intersection with U.S. Highway 62, thence west along U.S. Highway 62 to Black River, thence northeast along Black River to the Arkansas-Missouri state line, thence east along the Arkansas-Missouri state line to the point of beginning. All incorporated towns and cities or unincorporated towns or villages located on any highway used as a boundary line shall be within the regulated area.

Louisiana. Parishes of Allen, Beauregard, Bienville, Bossier, Cado, Calcasieu, Cameron, Clairborne, De Soto, Grant, Iberia, Jackson, Jefferson Davis, Lafayette, Lincoln, Natchitoches, Rapides, Red River, Sabine, Saint Martin, Union, Vermilion, Vernon, Webster, Winn, and that portion of Ouachita lying west of the Ouachita River.

New Mexico. All counties in the State.

Oklahoma. All counties in the State.

Texas. All counties in the State.

(b) *Eradication area.* All regulated area within the States of Arizona, Arkansas, and Louisiana is hereby designated as eradication area.

(c) *Generally infested area.* All regulated area within the States of New Mexico, Oklahoma, and Texas is hereby designated as generally infested area.

(Sec. 8, 37 Stat. 318, as amended, 7 U.S.C. 161, 19 F.R. 74, as amended; 7 CFR 301.52–2)

These administrative instructions shall become effective April 12, 1960, when they shall supersede P.P.C. 621, 2d Revision, 7 CFR 301.52–2a, effective June 9, 1959.

The purpose of this revision is to add to the regulated area the parishes of Jackson and Winn, in Louisiana.

This revision imposes restrictions supplementing pink bollworm quarantine regulations already effective. It must be made effective promptly in order to carry out the purposes of the regulations. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing revision are impracticable and unnecessary, and good cause is found for making the effective date thereof less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of April 1960.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F.R. Doc. 60-3296; Filed, Apr. 11, 1960; 8:47 a.m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 15]

PART 728—WHEAT

Subpart — Wheat Marketing Quota Regulations for 1958 and Subsequent Crops Years

MISCELLANEOUS AMENDMENTS

Basis and purpose. The amendments herein are issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, and the purpose is (1) to provide a time limit within which a producer must request that wheat not in excess of the allotment which is destroyed by some cause beyond his control be excluded from the classification of wheat acreage; (2) to provide for the exclusion from penalty under certain conditions, of irrigated volunteer wheat intergrown with specified grasses grown for seed production; and (3) to provide for the exclusion of emmer, spelt, einkorn, Polish wheat and poulard wheat from the classification of wheat acreage except where such acreage contains more than 10 percent wheat.

The amendment with respect to a time limit for requesting the exclusion of wheat destroyed by natural causes from the classification of wheat acreage is necessary to allow the county committee time to make a proper determination of the disposition of such acreage. The amendment with respect to grass seed production is necessary to provide relief to producers of grass seed where the grass must be seeded following a wheat crop and irrigated to produce a grass seed crop. The sentence concerning emmer, spelt, etc., was inadvertently omitted when § 728.851(v) was amended in 25 F.R. 716. This amendment reinserts the sentence and modifies it to provide that 10 percent wheat in the emmer, spelt, etc., will cause such crops to be classified as wheat acreage.

Since these amendments apply to the 1960 crop of wheat, it is important that producers be informed of them as soon as possible. Accordingly, it is hereby found that compliance with the notice, procedure and 30-day effective date provisions of the Administrative Procedure Act (5 U.S.C. 1003) is unnecessary and contrary to the public interest. Therefore, these amendments shall become effective upon publication in the FEDERAL REGISTER.

§ 728.851 [Amendment]

1. Section 728.851(v) (Definition of wheat acreage) is amended by deleting the final period and adding the following language; "not later than 30 days prior to the date wheat harvest normally begins in the county or areas within the county as prescribed in § 728.855; and (9) any acreage of volunteer wheat of the 1960 and subsequent crops, intergrown with Merion bluegrass, Newport bluegrass, Code 95 Kentucky bluegrass, Pennlawn fescue, S–143 orchardgrass, Climax timothy, Essex timothy, or seaside bentgrass, grown for seed production only and meeting all conditions of the provisions of § 728.897, provided the wheat production from such acreage is donated to a Federal or State wildlife refuge project or State fish and game commission for use as wildlife feed in accordance with the provisions of § 728.897. Wheat acreage shall not include any acreage of emmer, spelt, einkorn, Polish wheat and poulard wheat except that any acreage of such grains containing more than 10 percent wheat shall be considered wheat acreage.

2. A new § 728.897 is added as follows:

§ 728.897 Irrigated volunteer wheat intergrown with grass.

The penalty shall not apply to any irrigated volunteer (self-seeded) wheat of the 1960 and subsequent crops intergrown with Merion bluegrass, Newport bluegrass, Code 95 Kentucky bluegrass, Pennlawn fescue, S–143 orchardgrass, Climax timothy, Essex timothy, or seaside bentgrass, grown for seed production, provided the following conditions are met:

(a) The State committee determines that (1) the entire acreage devoted to intergown volunteer wheat and any of the above listed grasses is irrigated land on which the stubble from the wheat crop of the previous year has been burned off and such acreage has not since been cultivated; and (2) it would not be practicable to clip the volunteer wheat so that no wheat will be produced on the acreage without destroying the grass seed crop; and

(b) The volunteer wheat produced on the acreage is delivered, at no cost to the Government, to a Federal or State wildlife refuge project or State fish and game commission for wildlife feed within 60 calendar days after the date on which the harvesting of wheat is normally substantially completed in the county or area in the county in which the farm is situated, as determined in accordance with § 728.862(a)(3), or not later than 30 calendar days after notice of the farm marketing excess of wheat is mailed to the producer as provided in § 728.861, whichever date comes first.

(Secs. 301, 52 Stat. 38, as amended, 335, 52 Stat. 54, as amended, 55 Stat. 203, as amended, 373, 52 Stat. 65, as amended, 375, 52 Stat. 66, as amended, 106, 112, 125, 70 Stat. 191, 195, 198; 7 U.S.C. 1301, 1335, 1340, 1373, 1813, 1824, 1836)

Issued at Washington, D.C., this 6th day of April 1960.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-3313; Filed, Apr. 11, 1960; 8:49 a.m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 861.13]

PART 861—SUGAR BEETS; CALIFORNIA, SOUTHWESTERN ARIZONA, SOUTHERN OREGON, AND WESTERN NEVADA

Wage Rates; 1960 Crop

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Los Angeles, California, on January 18, 1960, the following determination is hereby issued.

§ 861.13 Fair and reasonable wage rates for persons employed in California, southern Oregon and western Nevada in the production, cultivation, or harvesting of the 1960 crop of sugar beets.

(a) *Requirements.* A producer of sugar beets in California, southern Oregon, and western Nevada shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in the production, cultivation, or harvesting of the 1960 crop shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, and after the date of publication of this section in the FEDERAL REGISTER, not less than the following:

(i) *When employed on a time basis:* (*a*) For thinning, hoeing, weeding, pulling, topping, loading, or gleaning:

	Cents per hour
California (except Imperial Valley), Southern Oregon and Western Nevada	80
Imperial Valley	75

(*b*) For the operations specified above performed by workers between 14 and 16 years of age, or by workers certified by the local County Agricultural Stabilization and Conservation Office to be handicapped because of age or physical or mental deficiency, the above rates may be reduced by not more than one-third. Maximum employment is 8 hours per day for workers between 14 and 16 years of age, without deduction from Sugar Act payments to producers.

(*c*) For all other operations in the production, cultivation, or harvesting of sugar beets for which a rate is not specified herein, the rate shall be as agreed upon between the producer and the worker.

(ii) *When employed on a piecework basis.* For work performed on a piecework basis the rate shall be as agreed upon between the producer and the worker: *Provided,* That for the operations of thinning, hoeing, weeding, pulling, topping, loading or gleaning the average hourly rate of earnings paid to each worker for each operation shall be not less than the applicable hourly rate specified under subdivision (i) of this subparagraph when computed on the basis of the total time each worker is employed on the farm for the operation.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals or any other class of worker to report to a place other than the field, such as an assembly point, stable, tractor shed, etc., located on the farm, the time spent in transit from such place to the field and from the field to such place, is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(b) *Applicability.* The requirements of this determination are applicable to all persons employed on the farm, except as provided in paragraph (c) of this section, in the production, cultivation, or harvesting of sugar beets grown on the farm for the extraction of sugar or liquid sugar: *Provided,* That such requirements shall not apply to any person engaged in such work with respect to sugar beets grown on acreage in excess of the proportionate share for the farm, which are marketed (or processed) for the production of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the producer furnishes to the appropriate Agricultural Stabilization and Conservation County Committee acceptable and adequate proof which satisfies the Committee that the work performed was related solely to such sugar beets.

(c) *Workers not covered.* The requirements of this section are not applicable to workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugar beets, including but not limited to electricians, mechanics, welders, and other maintenance workers and repairmen.

(d) *Proof of compliance.* The producer shall, upon request, furnish to the appropriate Agricultural Stabilization and Conservation County Committee acceptable and adequate proof which satisfies the Committee that all workers have been paid in accordance with the requirements of this section.

(e) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined herein through any subterfuge or device whatsoever.

(f) *Claims for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the Agricultural Stabilization and Conservation County Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at the County Office. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the County Office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The County ASC Committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Office. The address of the State Office will be furnished by the County Office. Upon receipt of the appeal the State Committee shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State Committee is not acceptable, either party may file an appeal with the Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payments under the act are concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination establishes fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of the 1960 crop of sugar beets in California, southern Oregon, and western Nevada as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugar beets, and cost of production), and the differences in conditions among various producing areas.

(c) *1960 wage determination.* This determination establishes for the operations of thinning, hoeing, weeding, pulling, topping, loading and gleaning, a minimum time rate of 75 cents per hour in the Imperial Valley and 80 cents per hour for all such work in other regions of California, southern Oregon and western Nevada. In both regions the rates are 5 cents per hour above the minimum rates fixed by the 1959 determination for the cultivating operations and are the same as the 1959 rates for the harvesting operations.

At the public hearing a representative of producers in the Imperial Valley stated that during 1959 producers increased the wage rates for thinning, hoeing, and weeding to 75 cents an hour; that the use of mechanical harvesters has practically eliminated the hand operations for pulling, topping, and loading; and that since gleaning requires no more skill on the part of workers than thinning, hoeing, or weeding, there is no longer any justification for maintaining the 5 cents per hour differential between the rate for cultivation and that for gleaning. A representative of the California Beet Growers Association testifying on behalf of producers in regions of California other than Imperial Valley, stated that hourly wage rates paid for thinning and hoeing sugar beets ranged from $0.825 to $1.00 per hour in other parts of the state, except in the San Joaquin Valley, Merced and Kern counties where the range was from $0.75 to $0.90 an hour; and that the 1959 crop had produced record yields in California. The Association filed a supplemental brief recommending that the Imperial Valley be continued as a separate wage district.

Consideration has been given to the testimony presented at the hearing, to the standards customarily considered in wage determinations, to information obtained by investigation, and to other pertinent factors. Costs, returns, and profits data obtained by field study for a recent crop have been recast in terms of prospective conditions for 1960. Analysis of all the factors indicates the wage rates established by this determination are fair and reasonable and are within producers' ability to pay.

Wage rates paid sugar beet workers in California during 1959 generally exceeded the minimum hourly rates fixed by the determination, except in the Imperial Valley where producers have customarily paid the minimum rates of the determination. However, in November 1959, producers in the Imperial Valley increased the hourly wage rate paid workers for thinning, hoeing, and weeding to 75 cents per hour or 5 cents above the minimum rate specified for such workers. The wage rates paid for sugar beet work in California during 1959 were generally about the same as the wages paid for work in other crops.

This determination establishes the minimum rates which producers must pay as one of the conditions for receiving payments provided in the act. The rate applicable to work performed on a piecework basis shall be as agreed upon between the producer and the worker, but for the operations of thinning, hoeing, weeding, pulling, topping, loading and gleaning, such workers must earn not less than the minimum hourly rates regardless of the experience of the worker. The wage rates established by this determination are minimum rates and producers may of course pay higher rates.

Accordingly, I hereby find and conclude that the foregoing wage determinations will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. Sup. 1131)

Issued this 7th day of April 1960.

TRUE D. MORSE,
Acting Secretary of Agriculture.

[F.R. Doc. 60-3311; Filed, Apr. 11, 1960; 8:48 a.m.]

[Sugar Determination 862.12]

PART 862—SUGAR BEETS; REGIONS OTHER THAN STATE OF CALIFORNIA, SOUTHWESTERN ARIZONA, SOUTHERN OREGON, AND WESTERN NEVADA

Wage Rates; 1960 Crop

Pursuant to the provisions of Section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in several cities in the sugar beet area during December 1959, the following determination is hereby issued.

§ 862.12 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of the 1960 crop of sugar beets in regions other than the State of California, southern Oregon, and western Nevada.

(a) *Requirements.* A producer of sugar beets in regions other than the state of California, southern Oregon and western Nevada shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm, in the production, cultivation, or harvesting of the 1960 crop shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, and after the date of publication of this section in the FEDERAL REGISTER, not less than the following:

(i) *When employed on a time basis for the following operations.* (*a*) For thinning, hoeing, weeding, pulling, topping or loading: 75 cents per hour.

(*b*) For operations specified above performed by workers between 14 and 16 years of age the rate may be reduced by not more than one-third. Maximum employment is 8 hours per day for such workers without deduction from Sugar Act payments to the producer.

(ii) *When employed on a piecework basis for the following operations:*

RATES PER ACRE BY WAGE DISTRICT

Hand labor operations and methods of cultivation	Wage district I: Michigan, Ohio, Illinois, Indiana, Minnesota, Iowa, North Dakota (eastern), Wisconsin	Wage district II: Colorado, Nebraska, South Dakota, Wyoming, Montana (except western), North Dakota (western), Utah, Idaho (southern and eastern), Kansas, New Mexico, Texas, Nevada (northern)	Wage district III: Idaho (western), Oregon (except southern), Washington, Montana (western)
First hoeing completely machine-thinned fields or hoe-thinning only on fields with any type cultivation	$9.00	$9.50	$9.00
Hoe and finger thinning partially machine-thinned fields	11.00	11.50	11.00
Hoe and finger thinning fields which have not been machine-thinned	14.00	14.50	14.00
First hoeing, except completely machine-thinned fields	5.50	6.00	7.50
Second and each subsequent hoeing or weeding	3.50	4.00	6.00

Combined operations. A written agreement between the producer and the worker is required in instances where a combined rate for "summer work" is agreed upon. In such case, the rate for "summer work" regardless of the number of hoeings or weedings required, shall be the sum of the applicable thinning, hoeing, and weeding rates specified above. In the absence of a written agreement, the rate for each operation performed by the worker shall be the applicable rate specified above.

Cross-cultivation. Where cross-cultivation is performed prior to hoeing or weeding, the specified first hoeing rate, other than first hoe following complete machine-thinning, may be reduced by not more than $1.00 per acre, and the specified subsequent hoeing or weeding rate may be reduced by not more than 50 cents per acre.

Wide row planting. The above thinning, hoeing, or weeding rates, adjusted for cross-cultivation where applicable, may be reduced by not more than the indicated percentages for the following row spacings: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent.

(iii) *When employed on a piecework basis for hand-labor operations not specified or defined or for harvesting.* The piecework rate for any hand-labor operation of thinning, hoeing or weeding not specified above and for the operations of pulling, topping, or loading, shall be as agreed upon between the producer and the worker: *Provided,* That the average hourly rate of earnings paid to each worker for each operation shall be not less than 75 cents per hour computed on the basis of the total time each such worker is employed on the farm for that operation.

(iv) *When employed on a time or piecework basis for other operations.* For all other operations in the produc-

tion, cultivation, or harvesting of sugar beets for which a rate is not specified herein, the rate shall be as agreed upon between the producer and the worker.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals or any other class of worker to report to a place other than the field, such as an assembly point, stable, tractor shed, etc.; located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(b) *Applicability.* The requirements of this section are applicable to all persons employed on the farm, except as provided in paragraph (c) of this section, in the production, cultivation, or harvesting of sugar beets grown on the farm for the extraction of sugar or liquid sugar: *Provided,* That such requirements shall not apply to any person engaged in such work with respect to sugar beets grown on acreage in excess of the proportionate share for the farm, which are marketed (or processed) for the production of sugar or liquid sugar for livestock feed or for the production of livestock feed, if the producer furnishes to the appropriate County Agricultural Stabilization and Conservation Committee acceptable and adequate proof which satisfies the Committee that the work performed was related solely to such sugar beets.

(c) *Workers not covered.* The requirements of this section are not applicable to workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugar beets, including, but not limited to mechanics, welders, and other maintenance workers and repairmen.

(d) *Proof of compliance.* The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee acceptable and adequate proof which satisfies the Committee that all workers have been paid in accordance with the requirements of this section.

(e) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined herein through any subterfuge or device whatsoever.

(f) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the Agricultural Stabilization and Conservation County Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at the County Office. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the County Office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The County ASC Committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Office. The address of the State Office will be furnished by the local County Office. Upon receipt of the appeal the State Committee shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State Committee is not acceptable, either party may file an appeal with the Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C. All such appeals shall be filed within 15 days after receipt of the recommended settlement of the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Director of the Sugar Division, his decision shall be binding on all parties insofar as payments under the act are concerned.

STATEMENT OF BASES AND CONSIDERATIONS

(a) *General.* The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of the 1960 crop of sugar beets in regions other than the State of California, southern Oregon, and western Nevada as one of the conditions with which producers must comply to be eligible for payments under the Act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determination the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugar beets and cost of production), and the differences in conditions among various sugar producing areas.

(c) *1960 wage determination.* This determination establishes a minimum time rate of 75 cents per hour for the hand labor operations of thinning, hoeing, weeding, pulling, topping or loading sugar beets. The rate for cultivation operations is 5 cents per hour more than the rate established for the 1959 determination, while the rate for the hand harvesting operations remains unchanged. The other provisions of the 1959 crop determination are continued.

A public hearing was held in Billings, Montana; Salt Lake City, Utah; Fargo, North Dakota; and Detroit, Michigan, during the period December 4, through December 11, 1959. Interested persons were afforded the opportunity to testify with respect to fair and reasonable wage rates for work performed by fieldworkers in the cultivation and harvesting of the 1960 crop of sugar beets. Producer representatives in each region recommended that there be no increase in wage rates for 1960. A representative of producers in one region recommended a change in terminology for two piecework operations. No testimony was offered on behalf of sugar beet workers in any of the areas in which the hearing was held.

Witnesses at the several hearings stated that generally sugar beet field work is performed on a piecework basis, and that improved cultural practices by growers, including the use of mechanical thinners and weeders, and the planting of monogerm seed, have benefitted workers by enabling them to increase their earnings.

Consideration has been given to the recommendations made at the public hearing; to the standards customarily considered in making wage determinations; to information obtained by investigations; to the returns, costs, and profits of sugar beet production obtained by field survey for a recent crop and recast to reflect prospective price and production conditions for the current crop; and to other pertinent factors. Analysis of all factors indicates that the wage rates of this determination are fair and reasonable and within producers' ability to pay.

The recommendations by a representative of producers that one of the piecework operations be eliminated, that several of the piecework operations be redefined so as to make the rates dependent upon whether the work was performed with long or short handle hoes, and that the rate for one of the hoeing operations be reduced, have not been adopted.

For several years the Department has conducted field studies to obtain data on man-hour requirements for thinning, hoeing, and weeding sugar beets. These data do not indicate the feasibility of basing piecework rate differentials solely on the basis of the type of hoe used by the worker in the thinning operation. The problem will be reviewed in future surveys of man-hour requirements.

Most thinning, hoeing, and weeding work in the sugar beet area is contracted on a piecework basis. The rates paid in many areas exceed those established in the determination by a substantial amount, depending upon the condition of the fields in which the work is performed, availability of labor in the area, and other factors. Improvements

in cultural practices, better seed bed preparation, mechanical thinners and weeders, as well as chemical weed control have tended to increase the earnings of workers both on an hourly and seasonal basis.

I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. 1131)

Issued this 7th day of April 1960.

TRUE D. MORSE,
Acting Secretary of Agriculture.

[F.R. Doc. 60-3312; Filed, Apr. 11, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-180]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Change of Effective Date

On February 11, 1960, there was published in the FEDERAL REGISTER (25 F.R. 1207) Amendment No. 165 to Part 600. This amendment, to be effective May 5, 1960, modified VOR Federal airway No. 1516 between Ponca City, Okla., and Springfield, Mo., concurrently with the commissioning of a VOR near Oswego, Kans.

The commissioning date of the Oswego VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until June 30, 1960.

Since this action does not impose a burden on the public, compliance with the notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act is necessary.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Amendment No. 165 to Part 600 is hereby modified as follows:

Delete: "effective 0001 e.s.t. May 5, 1960." and substitute therefor "effective 0001 e.s.t. June 30, 1960."

(Secs. 307(a), 313(a), 72 Stat. 749, 752; 49 U.S.C. 1348, 1354)

Issued in Washington, D.C. on April 6, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-3281; Filed, Apr. 11, 1960; 8:45 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce

PART 1—DEPARTMENT OF COMMERCE SEAL

The material appearing in 25 F.R. 575 of January 22, 1960 is superseded by the following:

Sec.
1.1 Purpose.
1.2 Authority for and establishment of the Seal of the Department of Commerce.
1.3 Delegation of authority.

AUTHORITY: §§ 1.1 to 1.3 issued under sec. 1, 32 Stat. 825, as amended, 5 U.S.C. 591.

§ 1.1 Purpose.

The purpose of this part is to describe the seal of the Department of Commerce and to delegate authority to affix the seal to certifications and documents of the Department.

§ 1.2 Authority for and establishment of the Seal of the Department of Commerce.

(a) The Act of February 14, 1903 (32 Stat. 825, as amended) (5 U.S.C. 591) established the Department of Commerce and provided that:

* * * The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal.

(b) The Department of Commerce seal, and design thereof, which accompanies and is made a part of this document, was approved by the President on April 4, 1913 and in the document of approval was described as follows:

Description of the Device of the Seal of the Department of Commerce.

ARMS: Per fesse azure and or, a ship in full sail on waves of the sea, in chief proper; and in base a lighthouse illumined proper.

CREST: The American Eagle displayed.

Around the arms, between two concentric circles, are the words:

"DEPARTMENT OF COMMERCE
UNITED STATES OF AMERICA"

The ship is a symbol of commerce, and the blue denotes uprightness and constancy; the lighthouse illustrates one of the principal functions of the Department, the illumination is a symbol of its duty in commercial enlightenment, and the gold denotes purity and sterling worth. The crest is the eagle of the American arms and denotes the national scope of the Department.

(c) The device of the seal of the Department of Commerce shall remain the same as approved by the President. However, the description of the elements of the design of the seal require some clarifying revisions incorporating current and appropriate reasons for each element of the design, as follows:

SHIELD: Per fesse azure and or, a ship in full sail on waves of the sea, in chief proper; and in base a lighthouse illumined on a mound of rocks issuant of the third.

CREST: On a wreath Blue and Gold an American bald eagle with wings elevated and displayed proper.

On a circular background between two concentric circles are inscribed:

"DEPARTMENT OF COMMERCE
UNITED STATES OF AMERICA"

When the seal is used normally, it will be without color.

The ship is a symbol of commerce, the blue denotes uprightness and constancy; the lighthouse is a well known symbol representing guidance from the darkness which is translated to commercial enlightenment, the gold denotes purity. The crest is the American bald eagle denoting the national scope of the Department's activities.

§ 1.3 Delegation of authority.

(a) Pursuant to authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950, (1) the Chief Administrative Officer of each primary organization unit, (2) the Director, Office of Administrative Operations for the Office of the Secretary and constituent units thereof, and (3) the heads of Department Field Offices in their own behalf and for the convenience of field installations of the primary organization units of the Department, are hereby authorized to sign as Certifying Officers certifications as to the official nature of copies of correspondence and records from the files, publications and other documents of the Department and to affix the seal of the Department of Commerce to such certifications or documents for all purposes, including the purpose authorized by 28 U.S.C. 1733(b).

(b) Delegations of authority to persons other than those named in paragraph (a) of this section may be made by the Assistant Secretary of Commerce for Administration.

(c) This delegation shall not affect or prejudice the use of properly authorized office or bureau seals in appropriate cases.

Dated: April 1, 1960.

FREDERICK H. MUELLER,
Secretary of Commerce.

[F.R. Doc. 60-3257; Filed, Apr. 11, 1960; 8:45 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER A—PROCEDURES; PRACTICE

PART 1—APPLICABILITY OR RULES OF THE BUREAU OF INDIAN AFFAIRS

On page 9741 of the FEDERAL REGISTER of December 4, 1959, there was published a notice of intention to add a new § 1.2 to Title 25 of the Code of Federal Regulations. The purpose of this amendment is to make clear that the Secretary of the Interior retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the Code of Federal Regulations in all cases where such waivers or exceptions are permitted by law and where the Secretary finds that the action proposed is in the best interest of the Indians involved.

Interested persons were given an opportunity to submit written comments, suggestions or objections with respect to the proposed amendment. No written communications have been received. This amendment will become effective at the beginning of the 30th calendar day following the date of publication in the FEDERAL REGISTER.

Section 1.1 is reserved. Section 1.2 is adopted as proposed. In addition, § 1.1 *Scope,* and § 1.2 *Availability of forms,* published in the FEDERAL REGISTER on April 7, 1959, are redesignated § 1.3 and § 1.10, respectively. Part 1 reads as set forth below.

Sec.
1.1 [Reserved.]
1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.
1.3 Scope.
1.10 Availability of forms.

AUTHORITY: §§ 1.1 to 1.10 issued under R.S. 161, 5 U.S.C. 22; R.S. 463, 25 U.S.C. 2.

§ 1.1 [Reserved]

§ 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior.

The regulations in Chapter I of Title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this Chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in Chapter I of Title 25 of the Code of Federal Regulations in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians.

§ 1.3 Scope.

Chapters I and II of this title contain the bulk of the regulations of the Department of the Interior of general application relating to Indian affairs. Subtitle B, Chapter I, Title 43 of the Code of Federal Regulations contains rules relating to the relationship of Indians to public lands and townsites. Subtitle A of Title 43 of the Code of Federal Regulations has application to certain aspects of Indian affairs and, among other things, governs practice before the Department of the Interior, of which the Bureau of Indian Affairs is a part. Indian health matters are covered in 42 CFR Part 36. Title 30 of the Code of Federal Regulations contains regulations on oil and gas and other mining operations which, under certain circumstances, may be applicable to Indian resources.

§ 1.10 Availability of forms.

Forms upon which applications and related documents may be filed and upon which rights and privileges may be granted may be inspected and procured at the Bureau of Indian Affairs, Washington 25, D.C., and at the office of any Area Director or Agency Superintendent.

FRED A. SEATON,
Secretary of the Interior.

APRIL 5, 1960.

[F.R. Doc. 60-3287; Filed, Apr. 11, 1960; 8:45 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 3—NATIONAL CAPITAL PARKS REGULATIONS

Suspension of Payment of Fees for Passenger-Carrying Vehicle Permits; George Washington Memorial Parkway

Pending decision on certain petitions recently filed with the Secretary of the Interior for amendments to 36 CFR 3.36 (b), the payment of fees for permits issued between March 31, 1960, and the date the Secretary of the Interior takes action on the petitions is hereby suspended; fees when so payable shall be adjusted to the date of such action in accordance therewith; and during such period permits will be issued upon application and in accordance with the provisions of § 3.36(b).

FRED A. SEATON,
Secretary of the Interior.

APRIL 6, 1960.

[F.R. Doc. 60-3290; Filed, Apr. 11, 1960; 8:46 a.m.]

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Yosemite National Park; Eating and Drinking Establishments and Sale of Food and Drink on Privately-Owned Lands

On page 389 of the FEDERAL REGISTER of January 16, 1960, there was published a notice and text of a proposed amendment of § 7.16 of Title 36, Code of Federal Regulations. The purpose of the amendment is to establish sanitary regulations governing eating and drinking establishments and the sale of food and drink on privately-owned lands in Yosemite National Park. To accomplish this purpose the amendment provides for the issuance of permits after inspection and approval by the County Health Officer of premises to be licensed.

Interested persons were given 30 days within which to submit written comments, suggestions or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received, and the proposed amendment is hereby adopted without change and is set forth below. This amendment shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER.

JOHN C. PRESTON,
Superintendent,
Yosemite National Park.

APRIL 1, 1960.

Section 7.16 is amended by adding a new paragraph (h), reading as follows:

(h) *Regulations governing eating and drinking establishments and sale of food and drink.* (1) No restaurant, coffee shop, cafeteria, short order cafe, lunch room, tavern, sandwich stand, soda fountain, or other eating and drinking establishment, including kitchens, or other place in which food and drink is prepared for sale elsewhere, may be operated on any privately-owned lands within Yosemite National Park unless a permit for the operation thereof has first been secured from the Superintendent.

(2) The Superintendent will issue such a permit only after an inspection of the premises to be licensed by the County Health Officer and written notice that the premises comply with the substantive requirements of State and County health laws and ordinances which would apply to the premises if the privately-owned lands were not subject to the jurisdiction of the United States.

(3) The Superintendent or his duly authorized representative shall have the right of inspection at all reasonable times for the purpose of ascertaining whether eating and drinking establishments are being operated in a sanitary manner.

(4) No fee will be charged for the issuance of such a permit.

(5) The applicant or permittee may appeal to the Regional Director, Region Four, National Park Service, from any final action of the Superintendent refusing, conditioning or revoking the permit. Such an appeal, in writing, shall be filed within twenty days after receipt of notice by the applicant or permittee of the action appealed from. Any final decision of the Regional Director may be appealed to the Director of the National Park Service within 15 days after receipt of notice by the applicant or permittee of the Regional Director's decision.

(6) The revocable permit for eating and drinking establishments and sale of food and drink authorized in this para-

graph to be issued by the Superintendent shall contain general regulatory provisions as hereinafter set forth, and will include such special conditions as the Superintendent may deem necessary to cover existing local circumstances, and shall be in a form substantially as follows:

FRONT OF PERMIT

No. ------

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

REVOCABLE PERMIT FOR OPERATION OF EATING AND DRINKING ESTABLISHMENTS, AND FOR SALE OF FOOD AND DRINK

Permission is hereby granted ---------- of ----------, during the period from ---------- 19-- to ---------- 19--, inclusive to operate a ----------
(Specify type of establishment)
on the following described privately-owned lands within Yosemite National Park, over which the United States exercises exclusive jurisdiction ---------- subject to the general provisions and any special conditions stated on the reverse hereof.

Issued at ---------- this ------ day of ----------, 19--.

Superintendent

The undersigned hereby accepts this permit subject to the terms, covenants, obligations, and reservations, expressed or implied, therein.

Two witnesses to signature(s):

---------- [1] ----------
---------- ----------
(Address) (Address)
---------- ----------
---------- ----------
(Address) (Address)

[1] Sign name or names as written in body of permit; for copartnership, permittees should sign as "Members of firm"; for corporation, the officer authorized to execute contracts, etc., should sign, with title, the sufficiency of such signature being attested by the secretary, with corporate seal, in lieu of witnesses.

Reverse of Permit

GENERAL REGULATORY PROVISIONS OF THIS PERMIT

1. Permittee shall exercise this privilege subject to the supervision of the Superintendent of the Park and shall comply with the regulations of the Secretary of the Interior governing the Park.

2. Any building or structure used for the purpose of conducting the business herein permitted shall be kept in a safe, sanitary, and sightly condition.

3. Permittee shall dispose of brush and other refuse from the business herein permitted as required by the Superintendent.

4. Permittee shall pay to the United States for any damage resulting to Government-owned property from the operation of the business herein permitted.

5. Permittee, his agents, and employees shall take all reasonable precautions to prevent forest fires and shall assist the Superintendent to extinguish forest fires within the vicinity of the place of business herein permitted, and in the preservation of good order within the vicinity of the business operations herein permitted.

6. Failure of the permittee to comply with all State and County substantive laws and ordinances applicable to eating and drinking establishments and the sale of food and drink, or to comply with any law or any regulations of the Secretary of the Interior governing the Park, or with the conditions imposed by this permit, will be ground for revocation of this permit.

7. No disorderly conduct shall be permitted on the premises.

8. This permit may not be transferred or assigned without the consent, in writing, of the Superintendent.

9. Neither Members of, nor Delegates to Congress, or Resident Commissioners, officers, agents, or employees of the Department of the Interior shall be admitted to any share or part of this permit or derive, directly or indirectly, any pecuniary benefit arising therefrom.

10. The following special provisions are made a part of this permit:

[F.R. Doc. 60-3289; Filed, Apr. 11, 1960; 8:46 a.m.]

Title 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 4—FORMS FOR TRADEMARK CASES

Application Based on Foreign Application or Registration

The following amendment cancels from the forms in trademark cases the form relating to applications for trademark registration based on a foreign application or registration; publication in advance, of a proposed amendment, was not necessary. The reason for the cancellation is that the particular form has been found to be incomplete and inadequate. Trademark applications based on foreign applications or registrations may follow the forms for other trademark applications, making whatever additions or changes which may be authorized by the statute and the regulations of Part 2, see the note at the beginning of Part 4.

The following amendment is made, to take effect thirty days after publication in the FEDERAL REGISTER.

Part 4 of Chapter I of Title 37 of the Code of Federal Regulations is amended by revoking § 4.12.

(Sec. 1, 66 Stat. 793, 35 U.S.C. 6; sec. 1, 41, 60 Stat. 427, 440, 15 U.S.C. 1051, 1123)

[SEAL] ROBERT C. WATSON,
Commissioner of Patents.

Approved:

FREDERICK H. MUELLER,
Secretary of Commerce.

[F.R. Doc. 60-3366; Filed, Apr. 11, 1960; 8:49 a.m.]

Proposed Rule Making

POST OFFICE DEPARTMENT

[39 CFR Part 22]

SECOND CLASS MAIL

Notice of Proposed Rule Making

It is proposed to amend the Post Office Department regulations relating to second class mail. These proposed amendments are set forth below.

The proposed amendment to 39 CFR 22.2(b)(5) consists of the elimination of the second sentence reading: "When news agents purchase copies for resale or receive copies on consignment for sale, only the persons who buy copies from the news agents may be included in the subscription list." This sentence was originally adopted for the purpose of curbing abuses of the second class mailing privilege which had developed because of the lack of adequate regulations governing circulation practices. The sentence was intended to exclude from the second class postage rates copies of the publication consigned to news agents but not sold to individual purchasers by the news agents. The sentence has not served its purpose. The objective will be achieved by the proposed amendment to 39 CFR Part 22.2(b)(7) which is more fully explained below.

The proposed amendment to 39 CFR 22.2(b)(7) is intended to establish a specific guide to publishers and postal employees for determining whether a publication is designed primarily for free circulation within the meaning of the law (39 U.S.C. 226). This guide is needed to give uniformity to the circulation standards required of second class publications and to bring consistency and simplicity to the administrative practices of the Department. The amendment establishes a standard of 70 percent paid circulation for second class publications. A 70 percent standard was adopted by the Audit Bureau of Circulation and has become an accepted standard in the publishing industry. The amendment will give effect to the requirement that a publication must have a legitimate list of subscribers. It will place unsold copies consigned to news agents in the same category as copies circulated free. If unsold copies, plus free copies, exceed 30 percent of the total distribution, the publication will be considered as designed primarily for free circulation within the meaning of the law.

The proposed amendments to 39 CFR 22.3(a) are designed to insure that no action will be taken on an application for second class entry until the application form is complete. It will also insure that no publication will be entered as second class mail until it has been demonstrated that it is a publication regularly issued at least four times each year. Under these amendments, when more than one half of the total copies of an issue are purchased by news agents for resale or consigned to news agents for sale, an application for entry will not be accepted unless the publisher has furnished all the required information with respect to the sales and returns by the news agents.

Although the regulations relate to a proprietary function of the Government, it is the desire of the Postmaster General to permit patrons of the postal service to present written views concerning the proposed regulations. Accordingly, such written views may be submitted to Mr. E. A. Riley, Director, Postal Services Division, Bureau of Operations, Post Office Department, Washington 25, D.C., at any time prior to the 60th day following the date of publication of this notice in the FEDERAL REGISTER.

The proposed amendments are as follows:

I. In § 22.2 *Qualifications for second-class privileges,* subparagraphs (5) and (7) of paragraph (b) are amended to read as follows:

§ 22.2 Qualifications for second-class privileges.

* * * * *

(b) *Basic qualifications.* * * *

(5) *List of subscribers.* Publications must have a legitimate list of persons who have subscribed by paying or promising to pay for copies to be received during a stated time.

* * * * *

(7) *Free circulation publications.* Publications designed primarily for free circulation may not qualify for second-class privileges. Publications are designed primarily for free circulation when the total number of copies furnished during any 12-month period to legitimate paid subscribers (see subparagraph (5) of this paragraph) and to the purchasers of single copies constitutes less than 70 per centum of the total number of copies distributed by mail at the second-class pound rates or the transient rate, by the publishers' carriers, and by other means for any purpose. See § 22.3(a)(1).

NOTE: The corresponding Postal Manual Sections are 132.225 and 132.227.

(R.S. 161, as amended, 396, as amended, sec. 14, 20 Stat. 359, as amended, sec. 1, 37 Stat. 550, as amended, sec. 2, 65 Stat. 672, as amended; 5 U.S.C. 22, 369, 39 U.S.C. 226, 229, 289a)

II. In § 22.3 *Application for second-class privileges,* paragraph (a) is amended to read as follows:

§ 22.3 Application for second-class privileges.

(a) *Applications for publications and news agents that do not have second-class privileges.* An application must be filed by the publisher before a publication may be mailed at the second-class rates. Two copies of the issue described in the application must also be filed. When one-half or more of the total copies distributed are purchased by news agents for resale or are consigned to news agents for sale, two copies each of at least four issues must be filed before an application is either approved or disapproved, to demonstrate compliance with the requirement for regular issuance at least four times each year. See § 22.2(b)(1). If the publication is printed in a foreign language, a brief translation of the contents of the copies must be furnished. A synopsis of each article and advertisement is usually sufficient. News agents must file applications before they may mail second-class publications at the second-class rates. Copies of all application forms may be obtained from local postmasters. The headings on the forms describe what information must be furnished by publishers and news agents. Use the following forms:

(1) File application Form 3501, "Application for Second-Class Mail Privileges", for second-class mail privileges for a publication that meets the basic qualifications at the post office of the place where the known office of publication is located. When one-half or more of the total copies distributed are purchased by news agents for resale, or are consigned to news agents for sale, postmasters will not accept an application on Form 3501, unless the publisher has completed the application by furnishing all of the information called for by questions 30 and 31, and the application shows that the total number of copies furnished to legitimate paid subscribers (see § 22.2(b)(5)) and to the purchasers of single copies constitutes 70 per centum or more of the total number of copies distributed by any means for any purpose. See § 22.2(b)(7).

(2) File application Form 3502, "Application for Second-Class Mail Privileges", for second-class mail privileges for a publication of an institution or society that does not meet the basic qualifications at the post office of the place where the known place of publication is located.

(3) File application Form 3501–A, "Application to Mail Publications at Second-Class Rates", for permission to mail foreign publications in the United States at the post office at which the copies are to be mailed.

(4) File application Form 3501–A for registry of a person or firm as a news agent with the privilege of mailing second-class publications at the post office where mailings are to be made.

NOTE: The corresponding Postal Manual Section is 132.31.

(R.S. 161, as amended, 396, as amended, secs. 5, 9, 18 Stat. 232, 233, as amended, secs. 10, 12, 14, 20 Stat. 359, 361, as amended, sec. 1, 37 Stat. 550, as amended, 47 Stat. 647, as amended, sec. 2, 65 Stat. 672, as amended; 39 U.S.C. 224, 225, 226, 226a, 229, 231, 283, 289a)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-3291; Filed, Apr. 11, 1960; 8:46 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 602]

[Airspace Docket No. 60-WA-86]

CODED JET ROUTES

Revocation

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 602 of the regulations of the Administrator, the substance of which is stated below.

L/MF jet route No. 22 extends from Laredo, Texas, to Washington, D.C. The Federal Aviation Agency has under consideration revocation of this jet route in its entirety. The Federal Aviation Agency IFR peak day airway traffic survey for the period from July 1, 1958, through June 30, 1959, showed a maximum of 8 operations between any two adjacent reporting points on this route. On the basis of this survey, it appears that retention of Jet Route 22-L is unjustified and revocation thereof would be in the public interest.

If this action is taken, L/MF jet route No. 22 would be revoked in its entirety.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Chief, Airspace Utilization Division. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on April 5, 1960.

GEORGE S. CASSADY,
Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-3285; Filed, Apr. 11, 1960; 8:45 a.m.]

[14 CFR Part 602]

[Airspace Docket No. 59-WA-413]

CODED JET ROUTES

Withdrawal of Proposed Modification

In a Notice of Proposed Rule Making published in the FEDERAL REGISTER as Airspace Docket No. 59-WA-413 on January 21, 1960 (25 F.R. 518), it was stated that the Federal Aviation Agency proposed to realign the segment of L/MF jet route No. 22 between Palacios, Tex., and Lake Charles, La., via the Galveston, Tex., radiobeacon. Based on air traffic activity over this jet route, it appears that its retention is unjustified and that it should be revoked in its entirety. Therefore, revocation of Jet Route 22-L will be proposed in a subsequent docket.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the proposal contained in Airspace Docket No. 59-WA-413 is withdrawn.

Section 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C. on April 5, 1960.

GEORGE S. CASSADY,
Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-3286; Filed, Apr. 11, 1960; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 239]

FORMS FOR REGISTRATION STATEMENTS

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposed amendment to Form S-9 (§ 239.22). Form S-9 is used, where certain conditions prescribed in the form are met, for registration under the Securities Act of 1933 of non-convertible, fixed-interest debt securities of an issuer which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

The proposed amendment relates to paragraph (c) (2) of General Instruction A (Rule as to Use of Form S-9) which defines the term "fixed charges" as used in General Instruction A and in Instruction 2 to the summary of earnings required by item 3 of the form. The term "fixed charges" is defined in clause (ii) to include "an appropriate portion of rentals under long term leases."

The Commission has encountered substantial differences of opinion as to the nature and length of leases to be included under the term "long term leases" and as to what constitutes an "appropriate portion of rentals" to be included in fixed charges. Professional groups and individuals have suggested that a statement be issued to define or clarify the concept of "an appropriate portion of rentals."

The proposed rule establishes a definite formula which may be used in determining the amount of rentals to be used. It changes the test from "an appropriate portion of long term rentals" to "one-third of all rentals." This compares with clause (i), which includes interest on "all indebtedness." It also permits an alternative method of calculation under exceptional circumstances.

The amendment is proposed pursuant to the Securities Act of 1933, particularly sections 7, 10 and 19(a) thereof. The text of the proposed revision of General Instruction A(c) (2) of the form reads as follows:

(2) The term "fixed charges" shall mean (i) interest and amortization of debt discount and expense and premium on all indebtedness, (ii) one-third of all rentals reported in Schedule XVI, or such other portion as can be demonstrated as appropriate in the circumstances of a particular case (if an alternative basis is used, explanation should be set forth in the statement required by Exhibit 5 of the Instructions as to Exhibits), and (iii) in case consolidated figures are used, preferred stock dividend requirements of consolidated subsidiaries, excluding in all cases items eliminated in consolidation.

All interested persons are invited to submit their views and comments on the proposed amendment, in writing, to the Securities and Exchange Commission, Washington 25, D.C., on or before April 29, 1960. All such communications will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

APRIL 5, 1960.

[F.R. Doc. 60-3294; Filed, Apr. 11, 1960; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Part 131]

[Docket No. AO 16-A6]

ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Decision With Respect to Proposed Amendments to Marketing Agreement, as Amended, and Order, as Amended

Pursuant to Public Law 320, 74th Congress, approved August 24, 1935 (49 Stat. 781; 7 U.S.C. 851 et seq.) and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders applicable to Anti-Hog-Cholera Serum and Hog-Cholera Virus (9 CFR Part 132) public hearings were held at Kansas City, Missouri, on July 24, 1956, and at Chicago, Illinois, on July 21-22, and December

1–11, 1958, pursuant to notices thereof published in the FEDERAL REGISTER (21 F.R. 4520, 23 F.R. 4432, 6379, 7587) on proposed amendments to the Marketing Agreement, as amended, hereinafter referred to as the "marketing agreement," and to the order, as amended (9 CFR Part 131), hereinafter referred to as the "order," regulating the handling of anti-hog-cholera serum and hog-cholera virus.

Upon the basis of the evidence adduced at the hearing held on July 24, 1956, and the record thereof, the Director, Animal Inspection and Quarantine Division, on the 3d day of February 1958, filed with the Hearing Clerk, United States Department of Agriculture, a recommended decision in this proceeding (23 F.R. 832) and upon the basis of the additional evidence adduced at the reopened hearings of July 21–22 and December 1–11, 1958, and the record thereof, said Director, on the 3d day of December 1959, filed with the Hearing Clerk, United States Department of Agriculture an amended recommended decision (24 F.R. 9902).

The material issues presented on the record of the original hearing and the reopened hearings are (1) the terms and conditions under which sales of serum and virus may be made between manufacturer handlers; and (2) whether or not the marketing agreement and order should contain additional provisions: (a) Prohibiting the payment of patronage dividends or refunds based on the volume of purchases of serum or virus by buyers or other discounts and refunds to buyers not immediately ascertainable from a posted price at the time of sale, except that a farmer cooperative association may pay patronage dividends; (b) prohibiting the handling of serum and virus by a handler who owns an interest in or exercises control over, or in whom an interest is owned or over whom control is exercised by another handler coming within a different classification of handler, excepting therefrom a farmer cooperative association; and (c) prohibiting the handling of serum and virus by a manufacturer or a wholesaler handler who designates or utilizes as his agent or distributional outlet a consumer or another handler coming within a different classification of handler than such manufacturer or wholesaler handler.

Findings and conclusions. On the basis of the evidence adduced at the hearings of July 24, 1956, July 21, 1958, and December 1, 1958, and on the records thereof, it is hereby found and concluded as follows:

1. The marketing agreement and order should be amended to provide that sales between manufacturers of serum or of virus may be made at negotiated prices. Provision should be made with respect to the sale and resale of the purchased product in order to guard against practices which could create disorderly marketing conditions.

The marketing agreement and order does not contain specific provisions providing for sales of serum and virus between manufacturer-handlers. Prior to the advent of modified and inactivated virus (vaccines) in 1951, there was no great need for inter-manufacturer sales as all manufacturer-handlers manufactured serum and virulent virus. In 1950 there were approximately thirty-six licensed manufacturers of serum and virulent virus under the order. There are now thirty licensed manufacturers coming within the purview of the order; thirteen of which produce serum and virulent virus, twelve produce both serum and vaccines and five produce vaccines only. The use of the vaccines as immunizing agents has increased tremendously over the period of years with a concurrent decrease in the use of the serum-virulent virus immunization process. In 1951 the total marketings of vaccines were 4,478,155 doses and the total serum marketed was 1,570,441,879 cc. In 1955 there were 27,329,260 doses of vaccines sold and 775,470,925 cc. of serum sold. The use of vaccine is continuing to displace the serum—virulent virus method of inoculation.

The change-over in the method of inoculation has created many marketing problems in the industry. It is now necessary that a manufacturer-handler be able to offer his customers both serum and vaccines in order to be on a competitive basis with those manufacturers handling both products. The competitive pressures exerted by the advent of the vaccines has already resulted in the reduction of the number of manufacturers of serum.

There are obstacles in becoming a manufacturer of vaccines. The presently known methods of producing vaccines are covered by patents and a serum producer can embark upon vaccine production only by inventing a new method or obtaining a license from a present patent holder, the granting of which is discretionary with the patent holder. Further, such manufacture requires a capital outlay which small serum manufacturers may not be in a position to make.

There are thirteen manufacturers of serum who do not produce vaccines. The serum production of these manufacturers is of the greatest importance to the growers of swine and the public generally as serum is the only product that can be used to control outbreaks of the disease of hog cholera. Serum is also required in the inoculation process with some of the vaccines and its use is often recommended with the other vaccines. The productive capacity of these manufacturers should be preserved for the benefit of the swine growers and the public generally. Further, the maintenance of an adequate and available supply of serum is a major objective of the act. It is therefore concluded that the best interests of the swine growers, the industry and the public will be served by amending the marketing agreement and order to specifically provide that a manufacturer may purchase the regulated products.

The record discloses that a manufacturer-buyer would be placed at a great competitive disadvantage if he were required to purchase a product at the posted wholesaler price as he would have to resell the product at a higher price to cover his cost of handling. By reason of these additional costs he would not be able to compete with other manufacturers at the wholesaler level of marketing. Traditionally it has been the informal practice for manufacturers in times of emergency to sell a product to another manufacturer at a negotiated price.

Except for one reported incident since the advent of vaccines this practice has not disturbed the orderly marketing of the products, although under certain circumstances an unscrupulous handler or handlers could have operated to the disadvantage of another manufacturer or wholesaler-handler or to the entire market. It appears that permitting such sales at a negotiated price with certain resale safeguards would not disturb orderly marketing and would be of assistance in preserving the serum productivity of the industry.

The two briefs filed pursuant to the hearing proposed that a manufacturer-handler be permitted to purchase a product from another manufacturer-handler at a negotiated price and that the purchaser be required to sell such product at a price not less than his supplier's posted prices at the time of such resale.

The proposal that the manufacturer-purchaser be required to sell the purchased product at a price not less than his supplier's posted prices at the time of such resale would guard against the buyer in combination with the seller, or the buyer alone, from engaging in unfair practices. Without such a restriction on resale the buyer would be able to undersell the wholesalers handling his supplier's product thereby eliminating competition at the dealer level of marketing. The buyer in concert with his supplier could also enter a highly desirable sales area of his supplier for the purpose of driving out his supplier's competitors by undercutting their prices, which practice would eventually result in driving the price of the product down to an uneconomic level or in the capture of the area market by such buyer and supplier. Such practices and variations thereof could result in chain reactions in other areas as all handlers are required to sell at the same price to each classification of the trade throughout the United States.

The briefs were not in agreement as to further provisions with respect to the situation where the manufacturer purchases a product from more than one manufacturer. It was suggested or recommended that further provision be made (1) that the buyer post separate prices for each supplier's product; (2) that no manufacturer be permitted to sell or deliver to another manufacturer whose currently effective posted prices are in any respect lower than the currently effective posted prices of such manufacturer; and (3) that the manufacturer-buyer be required to post and sell at prices no lower than the highest prices of all his suppliers.

The proposal that the manufacturer-purchaser be required to post separate prices for each of his supplier's products overlooks one of the fundamental requirements of the order program, i.e.,

that a handler may file only one price for each product for each classification of the trade. To adopt such proposal would disrupt the regulatory scheme set forth in the marketing agreement and order.

Proposal (2) in its entirety prohibits a manufacturer from selling serum or virus to a manufacturer-buyer whose selling prices are less than the currently effective prices of such manufacturer and providing further that no manufacturer-buyer shall sell serum or virus to wholesalers, dealers and consumers at prices lower than the currently effective prices of the manufacturer from whom he purchased such serum or virus. These provisions would allow the purchaser to purchase a product from a manufacturer with a high price and then purchase the same product from one or more other manufacturers with a lower price and alternately sell the product at the different prices of his suppliers by raising and lowering his posted prices (in accordance with the suppliers product being sold) as might be expedient under changing circumstances. His competitors would be subjected to the stress of fluctuating prices without knowledge of the particular brand being marketed. He would be in the position to influence the various classes of buyers to switch the brands normally purchased by them. Other variations of this method of competition could be accomplished. Further, it would tend to unduly restrict free trade between manufacturers as only those manufacturers with identical or lower posted prices could compete for a manufacturer-purchaser's business and the purchasing manufacturer could only purchase from another manufacturer whose prices were identical or lower. He would be wholly dependent upon a supplier whose price was the lowest regardless of other considerations. Such restrictions would be solely on the basis of price. Also there would be a tendency on the part of manufacturers to lower their selling prices to capture a desirable customer or customers. Such action might result in driving the price of the product to an uneconomic level.

The scheme of regulation contained in proposals (1) and (2) were not specifically mentioned at the hearing. While the need for restrictions on the resale of products purchased by a manufacturer were discussed, sales restrictions on the manufacturer producing the product were not mentioned. Proposal (3), providing that the manufacturer-buyer be required to post and sell at prices no lower than the highest prices of all his suppliers, was advanced at the hearing. This provision would accomplish the objective of proposal (2) without unduly restricting free trade (leaving the handlers free to choose with whom they deal) and will eliminate the situations whereby the price of the products could be driven down to an uneconomic level and the selling of a product of two or more manufacturers at alternating prices. It will guard against the undercutting of the prices of the supplier and of wholesalers handling the supplier's product. It would also prevent the situation whereby the buyer purchases the same product from two manufacturers and in combination with one of them undersells the product of the other manufacturer in one of his desirable sales areas for the purpose of capturing his customers. If the other manufacturer sells on a national scale he has only two choices, either to lower his prices nationally or lose his desirable local market. The wholesalers handling his product would be faced with the same situation, however, they have the additional choice of buying their products from the manufacturer-buyer's copartner in the scheme.

The requirement that a manufacturer-buyer sell the purchased product at a price no lower than the highest price of his suppliers under certain circumstances could operate temporarily to the detriment of the buyer who purchases a product from two suppliers whose prices thereafter deviate from each other. The buyer, however, can control with whom and how many manufacturers he deals whereas a seller cannot control the buyer's purchases from other manufacturers. The wholesaler handlers of the seller's product, of course, have no control over such sales or purchases. Under present marketing conditions it appears necessary to permit a manufacturer to purchase the regulated products, however, it is not intended that he be placed in a more advantageous position than his supplier or his competitors by reason of such purchase.

Any scheme of regulating the resales of a manufacturer-buyer presents problems with regard to marketing, administration and enforcement. Many of these problems will be resolved through the natural forces of marketing. Under the proposed provision handlers can detect a violation thereof as they have knowledge of each manufacturer's branded products and his filed price therefor, and through this means administration and enforcement will be made easier.

2. The marketing agreement and order should be amended to: (a) Prohibit manufacturer and wholesaler handlers or their subsidiaries or affiliates from paying, or agreeing to pay, patronage dividends or refunds based on the volume of purchases of serum or virus to the purchaser thereof or any other discount or refund not immediately ascertainable from the posted price at the time of sale, or basing upon patronage any payment, right or obligation, either directly, indirectly, prospectively or retrospectively, or associating with or tieing into a sale or sales, directly, indirectly, prospectively or retrospectively, any consideration, right or obligation the value of which is not immediately ascertainable from the posted price at the time of sale, providing, however, for the exemption therefrom of the payment of patronage dividends by a farmer cooperative association; (b) provide that a person shall not be classified as a wholesaler, or shall be deleted from the list of qualified wholesalers, if such person owns or controls, directly or indirectly, an interest in a dealer; or appoints or utilizes any dealer as his agent or distributional outlet, either directly or indirectly, or where an interest is owned or controlled, directly or indirectly, in such person by any dealer, providing, however, that if such person is a corporation ownership by dealers, both direct and indirect of a combined interest not to exceed 10 percent of the total outstanding stock of all classes of such corporation shall not disqualify such person for wholesaler status and providing, further, that these provisions shall not apply to a farmer cooperative association; and (c) prohibit a manufacturer handler or its subsidiary or affiliate from selling serum or virus to or through any wholesaler or dealer which such manufacturer or its subsidiary or affiliate appoints or utilizes as his agent or distributional outlet, either directly or indirectly, or in which such manufacturer or its subsidiary or affiliate owns or controls, directly or indirectly, an interest or which such manufacturer or its subsidiary or affiliate utilizes in any other manner in the handling of serum and virus. The term "farmer cooperative association" should be defined as recommended herein.

In order for a clearer understanding of the causes of the present controversies and conditions in the industry, it is believed that a dissertation on the purposes of the act and conditions prior to its passage, the nature of the disease of hog cholera, the present regulatory provisions of the order, the products regulated thereunder and their use, and the composition and distributional patterns of the serum and virus industry would be of benefit. Such information is contained in the legislative history of the act, the order, and the promulgation record on the order and the hearings on the proposed amendments.

The declared policy of the act, under which the marketing agreement and order was issued, is to insure the maintenance of an adequate supply of anti-hog-cholera serum and hog-cholera virus (hereinafter referred to as "serum", "virus", "vaccines" or "products") by regulating the marketing of serum and virus, and to prevent undue and excessive fluctuations and unfair methods of competition and unfair trade practices in such marketing. The legislation was considered necessary in view of the highly virulent and contagious nature of the disease of hog cholera, its characteristics to spread very rapidly, its existence at all times in some part of the United States, the disastrous effect a wide-spread epizootic would have on the national economy and the fact that the disease can be controlled only by the use of serum and virus. The time element in the receipt of serum in the face of a hog cholera outbreak is of utmost importance and can be the difference between disastrous losses and comparative safety, on an ever widening perimeter, because of the rapidity of the spread of the disease. An epizootic can and has spread across the entire United States in a very short period of time.

Prior to enactment of the legislation, several major epizootics of hog cholera swept the country causing great economic loss to breeders of swine, growers of corn, wheat and other grain, meat packers and railroads and created unem-

ployment in such industries, increased the price of pork and other meats to the consuming public and affected the national economy. These epizootics could not be controlled because of the lack of a sufficient and available supply of serum. This shortage was occasioned by cutthroat competition in the industry which drove the price of serum to such a level it was not profitable to produce it and carry reserve inventories, resulting in a shortage when it was drastically needed. The promulgation record on the original marketing agreement and order (Hearing of January 13 and 14, 1936, Omaha, Nebraska) sets forth more fully the conditions existing prior to regulation. Since the regulation of the industry there has been no uncontrollable epizootic of hog cholera.

The act authorizes the inclusion of provisions in the marketing agreement and order requiring each manufacturer handler to have in inventory a specified reserve supply of serum on a specific date of each year; requiring handlers to sell serum and virus only at the prices filed by such handlers in the manner provided in the marketing agreement and order; prohibiting unfair methods of competition and unfair trade practices; providing for the selection of an agency for administration of the order, setting forth the powers of such agency; reporting and assessment provisions; and provisions incidental to, and not inconsistent with, the terms and conditions specified in the act and necessary to effectuate the other provisions of such order. The act specifically exempts the marketing agreements upon which the order is based from the antitrust laws of the United States.

The order was originally issued on December 3, 1936 (1 F.R. 2074) and has been amended from time to time since its issuance. The major regulatory provisions of the order require each manufacturer handler to have in inventory on a specific date of each year a specified minimum reserve supply of serum; requires each "manufacturer" and "wholesaler" handler to file with the Secretary and the Control Agency administering the order, his selling prices, discounts and terms of sale to the classifications of purchasers defined in the order and regulations as "wholesaler", "dealer" and "consumer", which prices, discounts and terms of sale must be uniform to all buyers within the same classification; and prohibits sales, bids, offers, contracts to sell or deliver, at prices, discounts and terms of sale different from those set forth in his filed price list which is effective at the time such sale, bid, offer, contract to sell or delivery is made. Provision is made for amending such price list and each handler may file any price he thinks proper for the conduct of his business. Notice of such price filing is required to be given immediately to all handlers, and all price lists are to be made immediately available to the press and the consuming public. Specified unfair methods of competition and unfair trade practices (among which is the payment of rebates, refunds, commissions or unearned discounts or the extending of special services or privileges not extended to all purchasers) are prohibited.

The products regulated under the order are anti-hog-cholera serum and virulent hog cholera virus, and modified and inactivated hog-cholera virus (vaccine). Serum is made and tested in accordance with Departmental specifications under the direct supervision of employees of the Department and the vaccines are tested under such direct supervision. The cost factors of manufacturing the particular products are approximately the same with the exception of economies effected by efficiency of operations or in the purchase of materials. The quality of the particular products are approximately the same.

These products are used in the immunization of swine against the disease of hog cholera. The inoculation by serum alone gives immediate immunity to the disease, which passive immunity lasts for a period of approximately three weeks. This period of passive immunity could be greater or less depending on factors such as the potency of serum, dosage of serum administered, animal to be inoculated, and perhaps others. The simultaneous use of serum with virulent virus in appropriate doses, gives immediate permanent immunity to the disease in unexposed animals. Serum is the only product which can be used to treat swine which are affected with hog cholera; however, it is a common practice to administer virulent virus simultaneously with serum to swine in affected herds. Inoculation with modified virus (vaccine) gives immunity within seven days after inoculation. Inactivated virus provides immunity in approximately two weeks after use. There are two types of modified virus, one of which must be used with a small amount of serum, and the other may be used without serum although the use of a small amount of serum is often recommended. The sales of the first named type amount to approximately 64 percent and the second named type to approximately 30 percent of the total of all vaccines marketed. Inactivated virus is used without serum in the immunization process and its sales amount to approximately 6 percent of the total of all vaccines marketed. Prior to the discovery of the vaccine, the serum-virulent virus method of vaccination was the only known method which would give permanent immunity to swine against the disease. Since the discovery of the vaccines in 1951 their use as immunizing agents has displaced approximately 85 percent of the simultaneous method of vaccination.

The percentage of the estimated immunization of the total pig crop is lower in the last two years than it has been since the inception of the order. It has steadily decreased from 55.7 percent in 1950 to 35.6 percent in 1957. It is in periods of low percentage vaccination of the total pig crop that epizootics occur. The reserve supply of serum in 1957 was approximately 56 percent of the reserve in 1950, mainly due to the displacement of the serum-virulent virus method of inoculation by the vaccine method. A serious outbreak of the disease under the foregoing conditions possibly could be disastrous.

The serum and virus industry, traditionally, is divided into two groups commonly known as the "ethical" group, which markets its products principally through veterinarian channels, and the "lay" group, which markets its products through the usual business channels. Approximately 70 percent of all the serum and modified virus marketed is marketed by the "ethical" group.

The thirty manufacturers of the products consist of twenty-six proprietary stock corporations, 20 of which market through "ethical" channels, one sole ownership, who markets through "lay" channels, one limited partnership, whose limited partners are veterinarians, and two cooperative corporations, whose membership is composed of veterinarians only. The great majority of the serum and virus manufacturing plants are located in eight States in or adjacent to the corn-hog belt of the United States, but there are manufacturing plants on the West Coast, the East Coast, in the Southeast and Southwest. Approximately twelve of the manufacturers market their hog cholera immunizing products on a national basis, ten market in five or more States, and eight market in less than five States.

The "ethical" manufacturers market a large portion of their serum and virus directly to practicing veterinarians, who come within the "dealer" definition of the order. They also sell directly to those "wholesalers" who market principally to practicing veterinarians. The practicing veterinarian generally does not sell the products directly to owners and raisers of swine but furnishes the products when vaccinating swine, for which he usually charges a fee covering the service and the consumer price of the product. The "lay" manufacturers market their serum and virus to those "wholesalers" who sell directly to drug stores and other retail outlets coming within the "dealer" definition of the order and to farmer cooperative association "wholesalers" who sell such products to its member associations, who resell it to their farmer members. The foregoing are the general distributional patterns of the industry and the usual channels whereby serum and virus reach the ultimate consumer, the raisers of swine. However, there are variations of these distributional patterns as manufacturers in the serum industry traditionally have marketed their products at all levels of distribution, arising apparently because of the traditional "ethical" distributional pattern (since approximately 1913) and because of circumstances requiring emergency shipments of serum in the event of an epizootic of hog cholera. There is no requirement in the order restricting marketing by "manufacturers" to any one classification of purchasers, and no such marketing restrictions on a "wholesaler" except that 75 percent of his sales are required to be made to "dealers".

From the inception of the order until 1952, there were no serum or virus manufacturing units that were owned or operated by practicing veterinarians or by cooperative associations of practicing veterinarians. A practicing veterinarian comes within the "dealer" definition of the order. In 1952, the Iowa Cooperative Association was formed by a group of 14

practicing veterinarians. It is a cooperative corporation organized under Chapter 499, Code of Iowa, and presently is a manufacturer of vaccines. It purchased the assets of the Diamond Serum Company, including the Diamond brand name, and does business under the name of Diamond Laboratories. It limits its membership to veterinarians. Official notice is taken of Departmental records regarding the licensing of the members of the Diamond group to produce hog cholera products. Iowa Cooperative Association was licensed to produce serum and virulent virus on June 11, 1952: modified virus (two types) in February 1954 and February 1955 and inactivated virus in December 1955. It requested cancellation of its license to manufacture serum and virulent virus on April 14, 1957. As of December 1958, its total membership was approximately 130 practicing veterinarians, located mainly in Iowa. Its assistant general manager and laboratory director testified that it presently manufactures in the neighborhood of 200 separate veterinary products. It distributes its net profits to its members through the payment of patronage dividends in exact proportion to each member's purchases of the products during the accounting period. Dividends may be credited toward payment of a membership fee.

In 1957, the members of Iowa Cooperative Association organized Diamond Laboratories Company, a limited partnership. The limited partnership consists of three general partners, two of whom are members of Iowa Cooperative Association and the other is the general manager of the Association and of the limited partnership, and approximately 94 limited partners, which, at the date of formation, constituted the full membership of Iowa Cooperative Association. All the partners are veterinarians with the exception of one general partner. Subsequent limited membership is subject to the approval of the general partners. It is indicated that the number of limited partners has been expanded to include other members of Iowa. Diamond Laboratories Company was licensed to produce serum and virulent virus on April 14, 1957, the date Iowa Cooperative Association's license to produce such products was cancelled. It purchases vaccines from Iowa Cooperative Association on a cost price plus 5 percent basis. It sells principally to wholesalers who are located throughout the United States. It does not sell direct to its veterinarian partners but does sell serum and virus to Iowa Cooperative Association on a cost price plus 5 percent basis and sells hog cholera products to United Veterinary Cooperative at its "wholesaler" posted price. It distributes its net profits to its general and limited partners in proportion to their relative proprietary interest.

In 1958, the Diamond companies fostered the organization of United Veterinary Cooperative under Chapter 499, Code of Iowa (1954), as an outlet for hog cholera immunizing products through the limited partnership to practicing veterinarians who were not members of Iowa Cooperative Association. The membership is limited to veterinarians and the net profits of the cooperative is distributed as patronage dividends to its members in exact proportion to each member's purchases of the products during the accounting period. Patronage dividends are paid to applicants for membership and are applied toward the payment of membership fees. As of December 1958, its membership was approximately 80, most of whom reside, and practice veterinary medicine, in the States of California, Minnesota, Illinois and a few in Iowa. All its members are also stockholders of United Veterinary Corporation, and its Board of Directors are all members of Iowa Cooperative Association. One of the Directors is also a Director of such association. The record indicates it is in the process of obtaining more members; that Diamond Laboratories Company has salesmen performing services for United Veterinary Cooperative who do not, "in the usual sense," "take orders" but are "involved in getting members." United Veterinary Cooperative was licensed to manufacture modified virus on July 10, 1958. It purchases hog cholera products from Diamond Laboratories Company at Diamond's posted "wholesaler" price, although it is a manufacturer under the order.

In 1957, Diamond Laboratories Company organized United Veterinary Corporation under the general corporate law of Iowa, the members of which are approximately the same as that of United Veterinary Cooperative. It was organized as an outlet for veterinary supplies of Iowa Cooperative Association and does not produce any veterinary products. Its Class A stock is limited to veterinarians, the present members of which are located mainly in Illinois, Minnesota and California, and the Class B stock is held by Diamond Laboratories Company. Each class of stock is equally represented on the board of directors, but in the event of a tie vote, the decision rests with the Class B stock. Four of the eight directors are management officials of one or more of the other firms in the Diamond group. The share of the net profits of the corporation distributed to Class A shareholders (veterinarians) is distributed through the payment of patronage dividends in proportion to each such person's patronage of the business and to Class B stockholders is distributed on the basis of stock ownership. When the corporation's application for a license to manufacture modified virus was denied by the Department, the aforesaid United Veterinary Cooperative was organized and now has approximately the same membership. As the corporation does not have a license to manufacture serum or virus, it is not qualified to handle serum and virus except as a "dealer" on the basis of all its members being veterinarians. A Diamond group witness stated that it does not presently handle hog cholera products, although the records of the Department show that it has handled such products as agent of Diamond Laboratories.

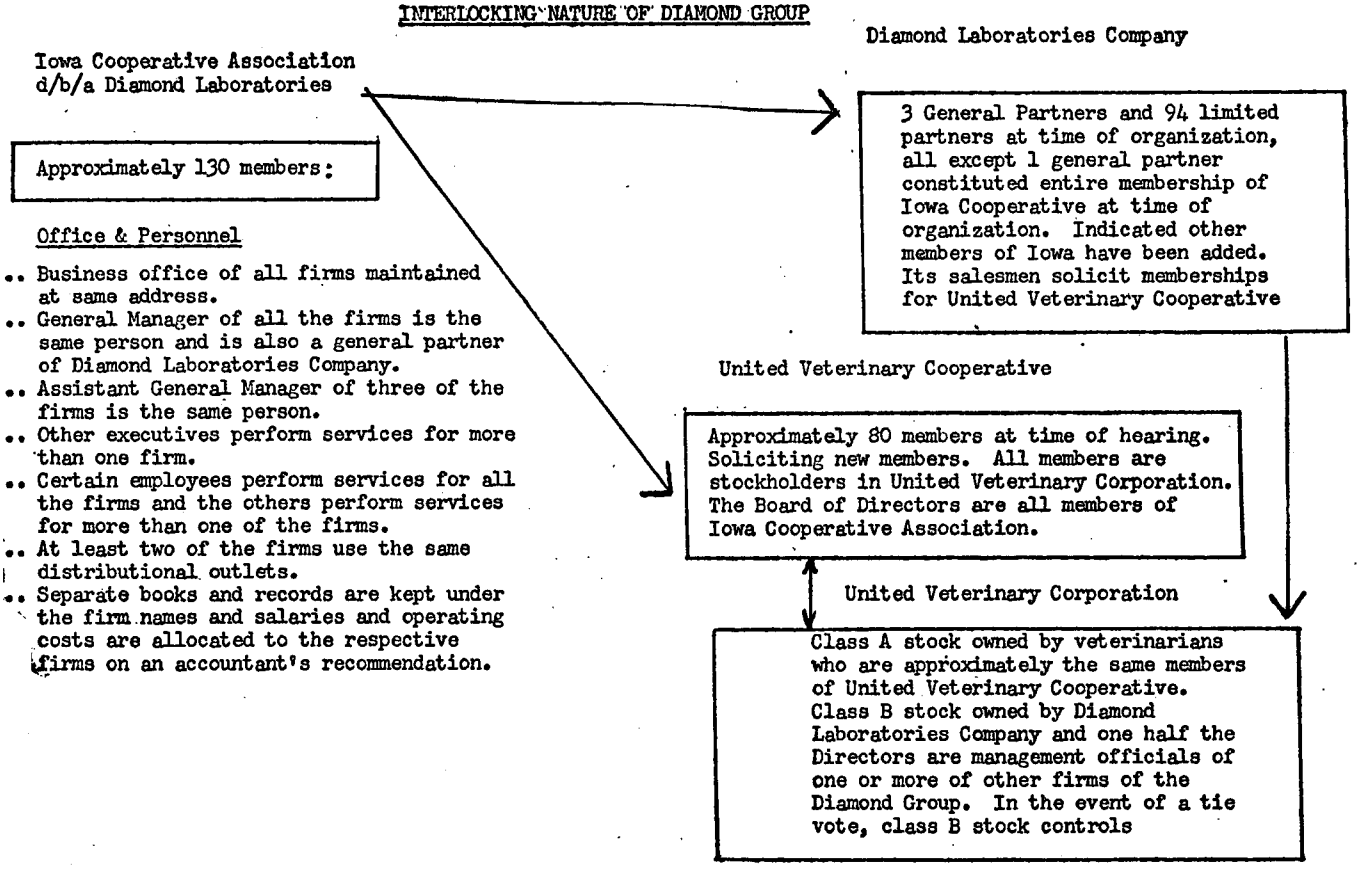
Each of the foregoing firms, Iowa Cooperative Association, d/b/a Diamond Laboratories, Diamond Laboratories Company, a limited partnership, United Veterinary Cooperative and United Veterinary Corporation, commonly referred to as the Diamond group, or Diamond affiliates, maintain their business office at the same address where Iowa Cooperative Association's manufacturing plant is located; the only name on the building is "Diamond Laboratories;" the same person is the general manager for all the firms; the same person is assistant general manager for three of the firms; other executives perform services for more than one of the firms; the directors of United Veterinary Cooperative are members of Iowa Cooperative Association and one of them is also a Director of such association, executive employees of one or more of the firms are Directors of one of the firms; certain of the employees perform services for all the firms and the others perform services for more than one of the firms; at least two of the firms use the same distributional outlets in other States and the employees employed therein; Diamond Laboratories Company sells to all the other firms and Iowa Cooperative Association sells to Diamond Laboratories Company; and Iowa Cooperative Association and Diamond Laboratories Company both ship vaccines produced by such association, from a common shipping cooler. Separate books and records are maintained under each firm's name and salaries of employees and operating costs are allocated to the respective firms on an accountant's recommendation.

While all details of operations and controls of the various organizations in the Diamond group were not spread on the record,[1] nevertheless the record discloses that control over the group operation is exercised by Iowa Cooperative Association either directly or through Diamond Laboratories Company (a limited partnership whose membership is approximately the same as that of Iowa Cooperative Association), by means of Board of Director representation, ownership of stock and interlocking management. There is intermarketing of the products between the various concerns under terms which are advantageous to the integrated memberships of Iowa Cooperative Association and Diamond Laboratories Company. The products manufactured by Iowa are channeled through the partnership to the other two organizations.

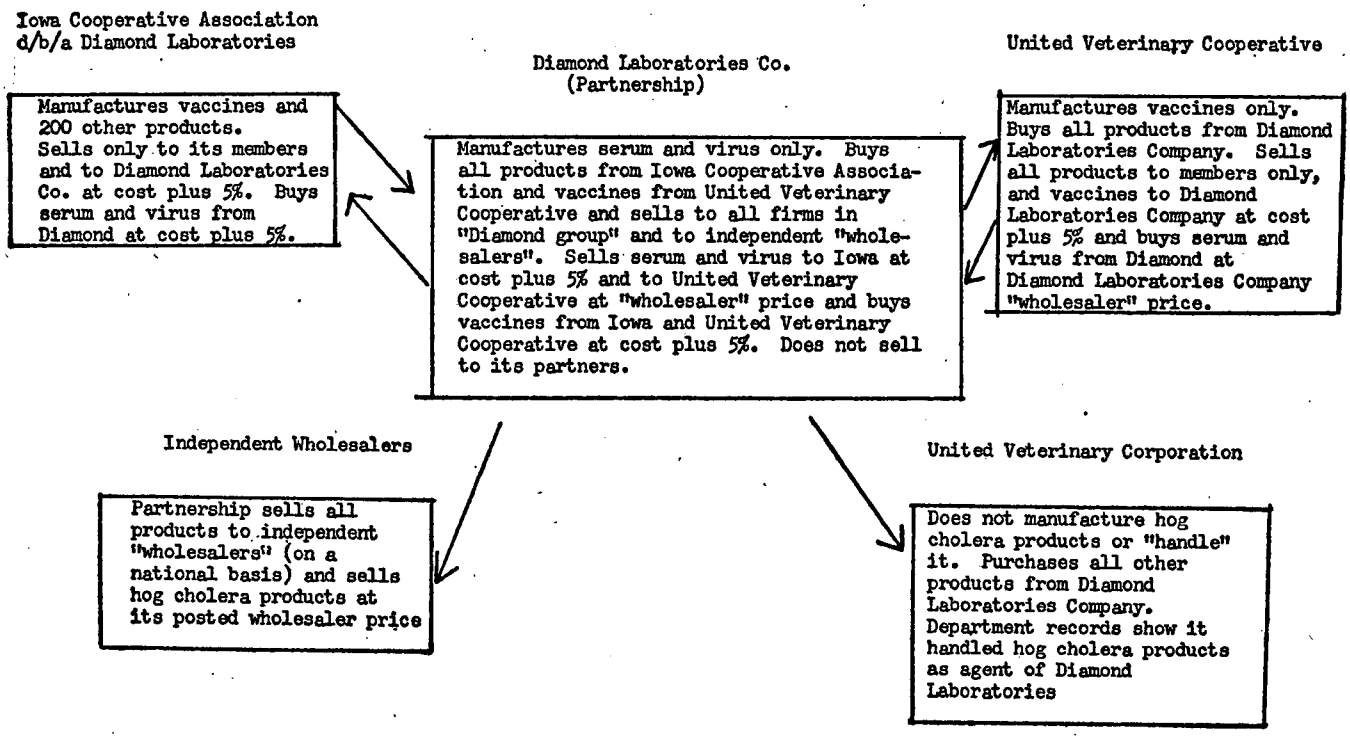
As the details of the interlocking nature of the Diamond group firms and the movement of the products among and out of the firms are somewhat complex, two charts have been prepared entitled "Interlocking Nature of Diamond Group" and "Movement of Hog Cholera Products by Diamond Group" which sets forth pertinent facts with respect thereto in graphic form as follows:

[1] The group's counsel did not see fit to place a witness on the stand with full knowledge of all operations and controls even though the general manager of all the organizations was present at the hearings. The Department does not have subpoena power for the purpose of compelling testimony in promulgation hearings on the Marketing Agreement and Order. All testimony given at the hearings was voluntary.

INTERLOCKING NATURE OF DIAMOND GROUP



MOVEMENT OF HOG CHOLERA PRODUCTS BY DIAMOND GROUP



With the exception of inter-group sales, Iowa Cooperative Association sells the products to its "dealer" members only at its posted "dealer" price, and Diamond Laboratories Company sells the products only to independent wholesalers throughout the United States at its posted "wholesaler" price, which wholesalers resell the products to "dealers" who are directly or indirectly in competition with the "dealer" members of Iowa Cooperative Association for consumer (farmer) business. The dealer members of this cooperative receive substantial patronage "dividends" or rebates on their purchases, thus reducing the net cost or price to them substantially below the posted "price". While the said "wholesaler" posted prices for the products are lower than the said "dealer" posted prices, the record indicates that by reason of such patronage rebates the dealer members of the said cooperative can purchase the immunizing products at an ultimate price lower than the price at which independent wholesalers purchase the same products from Diamond Laboratories Company.[3] Further, the dealer members of this cooperative, by reason of the patronage rebates, purchase the products at a much lower price than other dealers who purchase the same products from an independent wholesaler who purchases them from Diamond Laboratories Company, and at a lower price than any "dealer" can purchase from any other "wholesaler" or "manufacturer".[3]

Statistical evidence of record shows that Iowa Cooperative Association, d/b/a Diamond Laboratories, has increased its serum sales comparative rating among manufacturers from 13th in 1952, its first year of operation after purchase of Diamond Serum Company,[4] to 5th in 1957 in which year it organized Diamond Laboratories Comany, a limited partnership, which took over the manufacture of serum. In its first year of manufacturing vaccines (1954), it was 7th in sales rating which it increased to 5th. (Exhibits 103 c and d.) No other manufacturer of the products has had such a rapid growth in sales in such a short period of time.

Except for the Diamond group of manufacturers, and one sole ownership, all other "manufacturers" under the order are corporations who distribute their profits on the basis of proprietary interest, i.e., stock ownership. Some of these corporations have wholly owned subsidiary corporations, or partially owned subsidiaries, but such subsidiaries (if handling serum or virus) post identical prices as the parent corporation. The record discloses that stock of some of the large corporations possibly could be owned by veterinarians for investment purposes but that such ownership would be very minor in comparison to the total stock issued by the particular corporation. It was indicated, however, that a substantial amount, but less than a majority, of the stock of at least one comparatively small corporation is owned by practicing and non-practicing veterinarians, and that stock ownership by veterinarians existed in one or two other similar corporations. No evidence as to specific percentages of such type of stock ownership and the number of corporations in which this condition existed was introduced into the record.

Aside from Iowa Cooperative Association and United Veterinary Cooperative, who are "manufacturers" under the order, the only other cooperative associations handling serum and virus are farmer owned and farmer controlled cooperative associations. These farmer cooperative associations operate as either "wholesalers" or "dealers" under the order depending upon their level of operations. A farmer owned or controlled cooperative association which is qualified as a "wholesaler" under the order purchases serum and virus from a "manufacturer" at the manufacturer's posted "wholesaler" price and markets it at its "dealer" posted price to its farmer cooperative association members, who operate as "dealers" in the distribution of such serum and virus directly to those of their farmer members who are raisers of swine. Such "dealers" sell the products to its members only at the "consumer" price. Each of these farmer cooperative associations distributes its net profits in the form of patronage dividends to its members in proportion to such members' purchases during the accounting period.

Farmer cooperative associations have operated under the order since its inception. The creation of the classification of "volume contract purchaser" contained in the original order was for the benefit of a farmer cooperative association, as evidenced by the original promulgation hearing record. Due to controversy caused by firms not performing the functions of a wholesaler qualifying thereunder such classification was placed in the "wholesaler" definition, in § 131.8, as subparagraph (b), and was later specifically restricted to farmer cooperative associations and Federal and State agencies by amendments to the order effective August 18, 1947 and January 27, 1958 (12 F.R. 5385; 22 F.R. 10907).

Other "wholesalers" under the order are composed of varying types of business units, such as sole ownerships, partnerships and proprietary corporations, and, depending upon their size, their area of distributional operations vary from sections of States to several States and a few corporate wholesale houses operate on a national basis. As of December 1957, there were 240 qualified wholesalers under the order. A "wholesaler" holds its status under the order by virtue of affirmative action of the Control Agency upon a determination that it performs the functions of a "wholesaler" as defined in the order. Since the inception of the order, a firm has been denied qualification as a "wholesaler" if it was known that another class of handler owned an interest therein, or it owned an interest in another class of handler. Wholesalers compete for the business of "dealers." The "ethical" wholesaler principally is in competition for the business of practicing veterinarians and firms of practicing veterinarians, and the "lay" wholesaler competes for the business of lay vaccinators, drug stores, county farm bureaus and other firms who maintain stocks of serum and virus for sale to owners of swine. The foregoing is the general pattern of "wholesaler" competition and variances in competition exist, such as competition for the business of a raiser of a large herd of swine (consumer). However, this competition is somewhat limited in view of the 75 percent requirement for sales to "dealers" in order to qualify and maintain status as a "wholesaler."

Briefly stated, the proponents of proposals numbered 1 through 6 set forth in the notice of hearing of June 19, 1958 and of proposed modifications thereof made at the hearing contend (1) that the payment by handlers of patronage dividends, except by a farmer cooperative association, or other refunds to buyers not immediately ascertainable from a posted price at the time of sale, and (2) that ownership of an interest in or control over a handler by another handler coming within a different classification of handler except by a farmer cooperative association, and (3) that the designation or utilization by a "manufacturer" or "wholesaler" handler of another handler coming within a different classification of handler as such manufacturer or wholesaler handler's agent or distributional outlet, nullifies the purposes, objectives and effectiveness of the price posting and classification provisions of the order, constitutes unfair competition, creates disorderly conditions in the pricing, marketing and distribution of serum and virus thereby endangering an adequate and available supply of serum and virus to the raisers of swine, thus defeating the purposes of the act.

The Diamond group opposed the proposals with respect to the payment of patronage dividends and the ownership of an interest in a handler by another handler coming within a different classification of handler as applicable to veterinarian cooperative corporations, contending that payment of patronage dividends by a veterinarian-dealer owned manufacturer is compatible with the price posting provisions of the order, that "joinder of functions" in a cooperative promotes economic efficiency, that vet-

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[3] This statement is based upon computations made from statistical information and Exhibits 135 (1) and (3) showing financial data for the fiscal year 1957 of Iowa Cooperative Association and Diamond Laboratories Company, presented by a witness of the Diamond group, and the posted prices of each firm for the same period. While similar statistics are not available on United Veterinary Cooperative (it had not yet reached the end of its fiscal year) under a similar operation as that of Iowa it is reasonable to assume that approximately the same persentage rate of patronage dividends to sales and posted prices would be applicable to it.

[3] The range of price variance is small in the posted prices of all handlers for the various products for each classification of purchasers due to approximately the same quality of the respective products, costs of production and the highly competitive nature of the industry. The posted prices of the Diamond group are in line with the posted prices of other handlers under the order.

[4] Diamond Serum Company in the year prior to its purchase by Iowa Cooperative Association was 23d in comparative sales rating.

erinarian owned cooperatives perform an essential economic function to the best interests of the swine producer and that cooperative competition is fair competition. In its brief, the Diamond group withdrew that portion of its proposal numbered 7, contained in the notice of hearing, placing restrictions on "merger of classifications" by handlers other than cooperatives.

Baldwin Laboratories, Inc., a proprietary corporation and manufacturer of vaccines (a portion of whose stock is owned by practicing and non-practicing veterinarians) opposed the "joinder of functions" proposal insofar as it applied to manufacturing proprietary corporations, contending that the ownership of stock by practicing veterinarians in a corporatiton which pays dividends on the basis of stock ownership was not the issue, but that the price posting requirements of the order could not be met by a manufacturer paying patronage dividends because while the posted price is known the actual cost to the dealer is not known until such dividend is paid.

Illinois Farm Bureau Serum Association and Iowa Farm Supply Company supported the exemption of farmer cooperative associations from the provisions relating to patronage dividends and "joinder of functions," and affirmatively supported their proposal denominated No. 6 of the notice of hearing of June 19, 1958, as modified at the hearing.

Proponents introduced testimony with respect to the cutthroat competition in the industry prior to regulation and the disastrous effects thereof. Manufacturers, wholesalers, dealers and swine raisers testified that multiple "producer" and "wholesaler" sources of serum and virus, coupled with an effective geographical pattern of distribution for immediate availability of an adequate supply of the products to the raisers of swine, was necessary for the protection of the swine-raising industry and that disorderly marketing of the products would endanger such sources and distributional patterns. Oral and documentary evidence by manufacturers and wholesalers was introduced of the loss of practicing veterinarian customers after such customers became members of a Diamond group cooperative paying patronage dividends; their inability to recover such customers as proprietary business units could not meet this type of competition as the order prohibited the payment of refunds and unearned discounts on purchases; that such type of competition was selling memberships in the cooperative and not the selling of the products and services as was met in usual competition for business and resulted in a "captive market" of practicing veterinarians; that after becoming members they "disappeared into oblivion" and were "gone forever" and their business could not be recovered as was often done where the loss of a customer was to a business unit which did not pay patronage dividends; and that the payment of patronage dividends defeats the purposes of the price posting provisions of the order as competitors cannot tell from the prices posted by an organization paying such dividends what the ultimate price of the product is that must be met in order to be in a position to compete. There was testimony that a practicing veterinarian was also placed at a competitive disadvantage in obtaining business for vaccination of herds of swine as he did not know the ultimate price paid for the products by a competing veterinarian who received patronage dividends on his purchases.

The testimony discloses the acceleration of the Diamond group veterinarian cooperative movement and steadily increasing areas of operation, and that there is no limitation on the potentials of the cellular growth of the Diamond group; that it could be expanded by interlinking units in the form of multiple partnerships, cooperatives or cooperative type corporations to the present four existing companies. There was testimony that ownership of or partial ownership of or exercising control over a handler by another handler coming within a different classification of handler, and designation or utilization by a manufacturer or wholesaler handler of another handler coming within a different classification of handler as such manufacturer or wholesaler handler's agent or distributional outlet nullifies the purposes and effectiveness of the price posting and classification provisions of the marketing agreement and order.

The Diamond group introduced evidence with respect to the component units of such group and their operations; introduced statistical data based on annual reports of Iowa Cooperative Association covering all products produced, including hog cholera products, showing the net profit earned on each dollar invested in Iowa and patronage dividends to total member equity, a profit analysis of the combined operations of Iowa and Diamond Laboratories Company, allocating expense and assets to product groups based on volume of sales ratio (without regard to actual cost of production of the various products and sale price thereof) disclosing the percentage of net profit on hog cholera products and other products to the estimated total assets used in the production and sale of hog cholera products and of other products; an analysis of selected samplings of price postings for certain periods in certain years prior to 1958; other statistical material; and testimony as to the importance of a serum reserve (which is not, and cannot be, in issue in this proceeding).

Such group contended that veterinarian cooperative operations are economically efficient and beneficial to its members and the raisers of swine; that "joinder of functions" promotes economic efficiency; that payment of patronage dividends by veterinarian cooperatives is compatible with the price posting provisions of the order; that veterinarian cooperatives are needed to combat the "evils" resulting from price posting (based upon conclusions drawn from the "patterns" of a sampling of price filings) and that its competitive force in the industry should result in a more efficient industry enuring to the benefit of the raisers of swine.

The Diamond group also contended that under price posting, free and open price competition did not exist because members of the industry allegedly were engaged in price fixing through "some kind of machinery for concerted action in changing prices" in that competitors "raise or lower prices together" and the posted prices for a particular product varied by only a few cents. This appears to be a general attack on the desirability of a price posting program, a question not in issue in this proceeding. Moreover, this charge was largely based on statistics prior to 1958, which failed to consider the practice prevalent at that time, whereby industry members could check daily on prices filed the same day, and could file a competitive price list by telegraph, which practice was terminated by order amendment effective January 1958; that certain manufacturers' prices fluctuate due to bids on State contracts for large supplies of the products; that the 1955 amendment to the order bringing vaccines under the order provisions resulted in numerous price filings and adjustments during 1955 in the competitive positions of the various products; that a parent corporation and its subsidiaries are required to file concurrently identical price lists; and common cost factors in the production and distribution of the products. The record does not support a conclusion that there is not free and open competition in the pricing of the products or that there is concerted action in price fixing by members of the industry. The prompt filing of new price lists to meet a change in price by a competitor and the narrow range in the prices filed for a particular product instead are indicative of the highly competitive nature of the industry and of approximately the same quality and same costs of production of the particular products.

2(a) *Patronage dividends and refunds.* The price posting provisions of the act are for the purpose of effectuating stabilization of the industry to insure orderly marketing and an adequate and immediately available supply of the immunizing products to the raisers of swine by preventing undue and excessive fluctuations in the price, production and reserves of serum and virus. Price, production and reserves of the products are interdependent for if there is no assurance of price stability, production will decrease and reserves suffer thereby and if there is production in excess of demand and reserve requirements, the price of the products will be depressed. An excessive fluctuation in one causes repercussions on the others. The basic principle involved in price posting for stabilization purposes is that the price posted is an ultimate price which is uniform to all purchasers within the same class of buyers and that all interested parties, both buyers and sellers, know such ultimate price and all discounts and terms of sale applicable thereto. One of the major causes of the chaotic and depressed conditions in the industry prior to regulation which resulted in drastic losses to raisers of swine was traceable directly to lack of uniformity of prices, discounts and terms of sale to

the purchasers within the same class and knowledge of such prices by the various competitive elements of the industry.

One of the basic regulatory devices of the marketing agreement and order thus is that of mandatory price posting. Each manufacturing and wholesaler handler must publicly specify the prices at which each product will be sold by him to wholesalers, dealers and consumers, respectively, as defined in the order. No sale may be made except at the applicable posted price and posted prices can be changed only on three days prior notice. Discounts for prompt payment may be stated in the price posting but they must be immediately ascertainable and be available to all buyers of the class in question. Hidden and unearned discounts are prohibited.

The three classes of buyers, namely wholesalers, dealers, and consumers, are specially defined in the order and the definitions thereof are self-explanatory. The prices posted for wholesaler buyers always have been substantially lower than those for dealers or consumers and the posted prices for dealer buyers are in turn substantially lower than those for consumer (farmer) buyers. As indicated in the definition of "dealer," dealers generally are of two types. Veterinarian dealers buy serum and virus for administration to the swine of farmers and other dealers (including drug stores) resell serum and virus directly to owners of swine.

Under such a system of mandatory price posting, there is an incentive for buying dealers, including dealer veterinarians, to try to obtain serum and virus below the applicable posted prices while ostensibly paying such posted prices. One obvious way of avoiding effective price posting would be to offer a dealer buyer the prospect of a future, but indefinite, patronage rebate based on a calculation to be made in the future. Such a rebate would ordinarily violate the order and the proprietary manufacturer or wholesaler who makes or offers such a rebate would be subject to civil and criminal prosecution for violating the order. However, as heretofore stated, certain veterinarian dealers, members of the Diamond group, have been induced to obtain the net effect of such a rebate by joining a manufacturing cooperative composed of veterinarian dealers, which posts dealer prices at approximately the same level as those posted by other handlers but subsequently distributes dividends or refunds to its dealer members directly proportionate to the purchases made by each member. Each veterinarian member thus apparently buys at the so-called "posted" price, but such posted price is not a true price, because it is subject to reduction by way of a deferred price adjustment in the form of a patronage dividend. This "dividend" is not a return on capital or stock investment, for it is not related to the size of such investment. Instead, it is computed directly on the volume of purchases by the customer, making it clearly a refund directly associated with the customer's purchases.

An indirect evasion or avoidance of the mandatory price posting plan by means of such a cooperative scheme is just as serious a threat to the effectiveness of the whole price posting plan as a direct violation of the order by a proprietary handler who offers a "dividend" or patronage refund in like manner. Both have the same unstabilizing effect on the whole regulatory plan. In both cases, the posted price "paid" by a dealer is not the actual price when the transaction is finally and fully consummated. In both cases, effective price posting is undermined or destroyed contrary to the purposes of the act.

The extraordinary growth of these dealer cooperatives is indicative of the advantages which member veterinarians enjoy by way of ostensibly paying a publicly posted price while actually paying a lesser price. The evasion or avoidance of the effect of mandatory price posting appears to have been and is a principal purpose of these cooperative plans indulged in by veterinarian dealers. Such evasion or avoidance of the mandatory price posting plan contemplated by both the act and the order has already caused considerable instability in an industry for which Congress has authorized a truly effective price posting plan as a means of achieving stability and orderly marketing conditions. It seems apparent that where some dealers must pay full posted prices but others need not do so, instability and disorderly marketing must follow, contrary to the declared policy of the act and the very essence and purpose of the mandatory price posting plan.

In such circumstances the vital interest of the swine raisers of the Nation for whose immediate protection the legislation was enacted, as well as the public interest, must be protected against a weakening or destruction of the regulatory plan by any device which seeks to evade or avoid that plan. This includes the cooperative cloak used by some veterinarian dealers who thus seek to evade or avoid the effect of mandatory price posting. A failure to cope effectively with such an evasion of price posting would almost certainly endanger or destroy the whole regulatory plan devised by Congress for the protection of this very vital industry.

As part of the regulatory plan, the act also authorizes the prohibition of unfair methods of competition and unfair trade practices. The situation heretofore described constitutes such an unfair method of competition. Veterinarian dealers who can buy at a net cost less than posted prices through the cooperative device clearly enjoy an unfair competitive advantage over others who must pay the full posted price. Likewise, the dealer cooperative which can offer its member dealers a rebate or refund has a decided competitive advantage over other regulated handlers who are prohibited by law from doing so. The record shows that this competitive advantage—created by the order as it now is effective—has been employed to induce veterinarian dealers to transfer their business to the dealer cooperatives. The dealer cooperatives, by thus being able to shed its price posting obligations as a matter of reality and being able to offer its member dealers a preferred price arrangement not available to other sellers, makes such dealers captive customers for all practical purposes and destroys free competition in this respect. No other seller can offer these same price inducements without violating the regulatory orders. The payment of patronage dividends under the foregoing circumstances defeats the purposes and objectives of the price posting provisions of the act and constitutes an unfair method of competition and trade practice. It substantially restricts or destroys competition by removing the recipients thereof from the area of free and open competition and places both the seller and the recipients thereof with an unfair competitive advantage with their competitors operating on the same competitive level, resulting in injury to such competition. Where a marketing order issued under a statute which seeks to prevent unfair competitive advantages actually creates them, by regulating some while others can evade or avoid the effective regulation, the order must be rectified as a matter of common sense and fairness as well as statutory objectives.

It may be argued that it is unnecessary to prohibit the payment of patronage dividends in order to rectify competitive inequities under the order as all handlers have the choice of operating as cooperative corporations if they so desire and any inequities occasioned by patronage dividends are thereby incurred by choice. This argument ignores the effect that the extensive practice of paying patronage dividends would have on the price posting provisions and the regulatory scheme set forth in the order. If the payment of patronage dividends were permissible under the order such practice would completely nullify the price posting provisions and scheme of regulation set forth in the order. The price postings would not and could not show the varying amounts of patronage dividends paid as they would not be ascertainable until the end of the accounting period. The posting of prices would become a matter of form and of no effect as membership in the organization paying the highest percentage of patronage dividends would become more important than the prices posted by such organization. Marketing under such conditions would become a matter of competition for members rather than competition in the sale of the products as the centripetal forces of the profit motive on members would result in purchases from the members' own organization. As approximately 70 percent of the hog-cholera products marketed is sold through veterinarian channels, the competition on the "ethical" side of the industry for veterinarian members would become intense among manufacturers and among wholesalers and as between manufacturers and wholesalers. The wholesalers, of course, would be in no economic position to compete with a manufacturer for the business of veterinarian-dealers and would, through economic attrition, be driven out of the

industry. Similar competitive situations would exist on the "lay" side of the industry with similar results. The scheme of regulation under the order, i.e., the posting of uniform prices for each classification of buyers and the uniformity of prices to each purchaser within a classification, would become a nullity and of no force and effect. An objective appraisal of the consequence of this type of competition results in the conclusion that chaotic marketing conditions would evolve causing excessive fluctuations of price, production and reserves with consequent injury to the swine industry, and the public interest, if prior history of the industry is indicative of the results of unrestrained competitive practices, particularly with respect to varying prices to purchasers within the same classification of buyers and lack of knowledge of the ultimate price to a particular class by buyers and sellers.

The dealer cooperatives contended that the cooperative plan is a more efficient and better method of distributing serum and virus. The record does not show that serum and virus can be produced more efficiently because it is made by a cooperative, nor does it show that a cooperative renders requisite distributional services more efficiently purely because it is a cooperative. The principal and perhaps the only reason for the rapid growth of the dealer cooperatives has been the opportunity to evade or avoid, by means of patronage refunds, the actual impact of mandatory price posting imposed on others by the regulatory order. This the dealer cooperatives have been able to do only because they are cooperatives, but this constitutes a reason for correcting the order rather than perpetuating the artificial advantage enjoyed by them.

The dealer cooperatives also contended that their payment of patronage dividends is a distribution of earnings rather than an adjustment of price and therefore is not inconsistent with effective price posting regulation. As previously stated, the actual net effect and apparent purpose of such patronage "dividends" is to adjust downward the net price or cost actually paid by member dealers below the level of the posted dealer price. This adjustment or "dividend" is not based on invested or accumulated capital, but is directly associated with and dependent on serum and virus purchases by the dealers. Thus a dealer who has a substantial capital investment in the cooperative but buys no serum or virus from it gets no patronage dividend. Conversely, dealers with substantial purchases receive dividends or refunds wholly disproportionate to their investment or share of the capital assets of the cooperative. In such circumstances, the technical or legalistic means by which the dividend refund, rebate, or price adjustment is accomplished, derived, or distributed is of little consequence for regulatory purposes of this Federal price posting program. If, as here, the net actual effect is to make a deferred adjustment of the price paid, i.e., a reduction of the actual cost of the purchase to the dealer below the ostensible posted price, it should be dealt with as a price adjustment or rebate for purposes of this program.

Where a legalistic cloak conceals or obscures the true nature and purpose of a transaction and such transaction is contrary to or evades or avoids the regulatory effect and purposes of a Federal order having the force and effect of law, including a price posting program such as the one here involved, the Federal government has the power to pierce this legalistic veil and appraise and deal with the transaction in realistic fashion. In the circumstances here presented, we conclude that the patronage dividends paid by the dealer cooperative are in fact deferred price adjustments to dealers and should specifically be prohibited as violative of the spirit, purpose and objectives of the price posting provisions of the act and the order.

This conclusion and result is in accord with other Federal government action, both in this general field and in these specific circumstances. Official notice is taken that for many years, the Federal government has ruled that for certain Federal income tax purposes, patronage dividends by cooperatives can and should be treated as deferred price adjustments and not as gross income received by cooperatives, irrespective of State statutes. Farmers Cooperative Co. *v.* Birmingham, 86 F. Supp. 201 (D.C. N.D. Iowa, 1949) and cases and authorities cited. See also Pomeroy Cooperative Grain Co. *v.* Commissioner, 31 T.C. 674, 684–6 and authorities cited. In fact, one of the principal witnesses for the dealer cooperatives admitted that patronage dividends by cooperatives, presumably including these cooperatives, are not taxable as income to the cooperative, presumably because of this very principle of deferred price adjustment.

It is further to be noted that the Federal power to regulate interstate commerce is complete and perfect and supersedes and is paramount over any inconsistent action by any State. Congress has delegated to the Secretary this Federal power to regulate the handling of serum and virus and has specifically authorized the issuance of a regulatory order having the force and effect of law which may compel fully effective and realistic price posting and may prohibit unfair methods of competition and unfair practices on a national basis and as a matter of national concern.

The dealer cooperatives further contend that patronage dividends by such cooperatives are desirable as an economic force to reduce prices and margins of profit throughout the industry. The short answer here is that Congress has indicated that an effective price posting regulatory order should be authorized in the public interest to prevent demoralization in an industry in which adequate supplies and orderly marketing are essential to the nation. This record clearly does not establish that such a price posting plan should be abolished and if there is to be mandatory price posting it should be mandatory and fully effective for all. As previously shown, the payment of patronage dividends by the dealer cooperatives is essentially incompatible with an effective and equitable price posting program in this industry.

Moreover, this argument assumes that patronage refunds are necessarily effective as a price lowering device and that price reductions are necessarily desirable in this industry to the exclusion of other important considerations. The record does not show that the dealer cooperatives have in fact operated to reduce prices generally. But assuming, arguendo, that patronage refunds could have this price effect, the "advantages" derived from patronage refunds logically should then be extended to all handlers, whether cooperative or not. An extension of such a privilege to all handlers posting "prices" would soon lead to complete demoralization and destruction of the price posting plan, for no price posted would be a firm price in that it would always be subject to subsequent adjustments in undisclosed and unascertainable amounts. Moreover, it seems obvious that any such general price lowering "objective" probably could be accomplished more directly and effectively by removing all Federal regulation and permitting completely uncontrolled pricing (and price cutting) by all handlers—the very situation that Congress sought to alleviate or prevent by enacting this legislation. Of course, prices should be reasonable; and Congress evidently concluded that an effective price posting order would accomplish that objective, consistent with other considerations of vital importance to this industry, the swine raising industry and to the national interest.

The dealer cooperatives also contend that to preclude such cooperative "dividends" would be to prohibit an otherwise lawful business practice and would violate "due process." The short answer is that otherwise lawful business practices may be made unlawful by Federal regulation. In fact, the very concept of mandatory price posting necessarily impinges on otherwise lawful business practices. In the absence of a mandatory price posting plan imposed by law, any handler would have an absolute right to sell at any price he pleased, subject only to possible application of the Federal antitrust laws. Similarly, other business practices, such as those here presented, which are inconsistent with or designed to evade or avoid mandatory and effective price posting may be prohibited as a matter of Federal law and jurisdiction over interstate commerce.

In view of the foregoing, it is concluded that the order should be amended to prohibit specifically and clearly the allowance of patronage dividends or refunds or similar discounting practices by cooperatives or similar organizations composed of such proprietary dealers, wholesalers or manufacturers, just as similar discounts, patronage dividends, etc., are now prohibited for other handlers; and to provide for declaring ineffective a posted price which is improper.

The exceptions to the recommended decision, as amended, filed by counsel for Iowa Cooperative Association, et al., request that the coverage of the recommended provisions with respect to the payment of patronage dividends or re-

funds (which are contained in recommended §§ 131.51(b), 131.54, 131.60 and 131.71(j)) be made clear, particularly with respect as to whether or not dividends may be paid on stock or capital investment. We believe that this decision makes clear that payment of dividends on the basis of stock ownership or capital investment only is not prohibited. However, a dividend apparently paid on stock or capital investment but which in reality is based, directly or indirectly, on patronage should be prohibited for the same reasons given herein for prohibiting the payment of patronage dividends. For example, a right or a restriction placed on the amount of stock or capital investment a person is permitted to own from time to time in a firm, dependent upon the volume of patronage done with the firm by such person either on a retrospective or prospective basis, would accomplish in an indirect manner that which is specifically prohibited, i.e., the payment of dividends based on the volume of patronage. Other methods might be adopted to avoid or evade the prohibition against the payment of patronage dividends or refunds. The recommended provisions of §§ 131.51 (b), 131.54, 131.60 and 131.71(j) therefore, should be revised to guard against evasionary practices by a manufacturer or wholesaler handler or its subsidiary or affiliate and make clear that any payment, right or obligation based upon patronage, either direct, indirect, prospective or retrospective is prohibited and that any consideration, right or obligation associated with or tied into a sale, or sales, directly, indirectly, prospectively or retrospectively, the value of which is not immediately ascertainable from the posted price at the time of sale is prohibited.

It is, however, further concluded that farmer cooperatives, as defined in the proposed amendment, which are organizations composed, controlled by and operated for the benefit of farmer consumers, should be allowed to continue to pass on patronage dividends through their cooperative channels to consumer farmers. Such cooperatives purchase the products for distribution to and utilization by their farmer-member patrons. After such purchase, the products do not again enter the usual competitive trade channels for resale to farmers as do those products purchased by a member of the dealer cooperatives. Also, unlike the dealer cooperatives, the farmer cooperatives assure that dividends, if any, enure to swine raisers for whose direct benefit the act was enacted by Congress. The dealer cooperatives provide no such assurance. In fact, according to the testimony of a witness for the dealer cooperatives, it would be unethical for a member veterinarian to pass on to the farmer any portion of his patronage dividends. Finally, such farmer cooperatives have operated under the order for the benefit of farmers during the entire history of the program and have not caused instability or disruption in the industry, nor is there any indication that this will occur in the foreseeable future. Statistical evidence of record shows that farmer cooperatives' percentage of the total sales of all wholesalers has dropped consistently since 1950 while Iowa Cooperative Association (Diamond) has had a phenominal increase in comparative sales rating among manufacturers since 1952, the first year of operation. Such statistics are indicative of the relative competitive force exerted in the industry by the two types of cooperatives. The reasons which compel the amendment of the order with respect to the payment of patronage dividends by dealer cooperatives and similar groups thus do not appear to exist as to farmer cooperatives. No showing has been made of any need to change their present status under the order to protect the integrity of the basic regulatory plan and effectuate the declared policy of the act.

Certain witnesses for the dealer cooperatives attempted to show that mandatory serum reserve provisions are no longer necessary in the order. These contentions were disputed by other witnesses and at least one of the witnesses for the dealer cooperatives admitted that a serum reserve was both desirable and necessary but disputed the need of requiring it by order provisions. The need for these reserve provisions in the order was not at issue in the proceeding, for there was no proposal to delete or modify them. It is, therefore, unnecessary and improper to resolve this question in this proceeding. It is, however, appropriate to observe (1) that as recently as 1958 Congress reenacted and reapproved the serum reserve provisions of the act, (2) that shortly thereafter the order provisions were modified and reissued after hearing and industry approval, to conform with the amendment of the act, and (3) that experience of the Department has not demonstrated that an adequate reserve of serum is no longer desirable or necessary to guard against a possible epizootic of serious proportions.

2(b) *Merger of buyer classifications.* Also necessary to effective classified price posting are regulatory provisions which adequately assure (1) that each buyer is classified properly and clearly in only one class and (2) that each seller who posts prices can offer the commodity to a particular buyer at only one posted price instead of several such prices. If buyers or sellers can avoid the effect of classified price posting in either of the two indicated ways, i.e., by "merging" or obscuring the buyer classifications which underly the whole price posting plan, in a way to obtain either a buying or selling advantage over others, it injures others, impairs the effectiveness of the regulatory plan and tends to create disorderly marketing conditions, contrary to the objectives of the act and the order.

An undesirable "merger" of buyer classifications occurs when several dealers form a group purchasing organization to qualify as a "wholesaler," thereby obtaining serum and virus for the component dealers at the wholesaler price for which the dealers would not otherwise qualify in view of their actual competitive level of operations. It is evident that such an arrangement would place such dealers in a more favorable competitive position than other dealers who must purchase at the dealer price. In reality, such a dealer organization remains a group of individual dealers who should be treated as such—and not as wholesalers—for classified price posting purposes.

Another illustration of the same general problem is where a wholesaler purchases or controls a group of dealers, as, for example, a chain of drug stores, or conversely, where such a chain acquires or controls a "wholesaler." Here again, a "merger" of classifications occurs for the purpose of obtaining wholesaler prices for dealers. These are some illustrations of undesirable mergers of classification but are not exclusive. The problem generally exists whenever dealers own or control wholesalers or wholesalers own or control dealers, directly or indirectly. The end result of such mergers of classification is to create disorderly marketing. Unless corrected, it gradually erodes away the effectiveness of the price posting provisions of the order.

In the past, where it became known to the agency that a wholesaler applicant was in fact composed of or substantially controlled by dealers who sought to attain wholesaler status, the agency has denied such applications on the ground that the applicant was in fact a dealer organization seeking preferred buying status, and should not be entitled to such status. Wholesaler applications likewise have been denied where it appeared that the applicant owned or controlled dealers or utilized them as agents or branch houses. Similarly, previously qualified wholesalers have been deleted from the wholesaler list where it appeared that such circumstances existed. Through administrative action over a long period of time, the order thus has been interpreted and applied as not permitting a merger of buyer classifications.

It was proposed at the hearing that such business arrangements be outlawed and absolutely prohibited by the order, i.e., that all handling between the affected parties be prohibited in such circumstances. Although much can be said in support of such a requirement, it appears unnecessary to go that far at this time. Instead, it is concluded that the incentive for such merger of buyer classifications can be removed by providing specifically that if and when it occurs, wholesaler status will be denied or lost, as the case may be. The order should be amended accordingly to make specific provision for the denial of wholesaler status in the circumstances outlined above. However, this should not apply to bona fide farmers cooperative associations for the same reasons heretofore stated in connection with patronage dividends.

However, there are several wholesaler corporations in the industry, whose stock is sold to the general public. In these circumstances, the corporation has no control over purchases of its stock by specific persons. In order that a corporate wholesaler not be subject to reclassification by reason of possible purchase of its stock for investment purposes, provision should be made exempting

such corporation from the provision regarding an interest being owned in it by other persons coming within a different class of buyer, provided that such combined total interest does not exceed 10 percent of the total outstanding stock of all classes of such corporation. It is believed that the 10 percent ownership provision would amply cover any such incidental ownership of stock for investment purposes.

The exceptions to the recommended decision, as amended, filed by counsel for Allied Laboratories, Inc., et al., propose clarifying changes in the language of recommended amendment to § 131.8 in order to guard against subterfuges with regard to ownership or control, either direct or indirect, of a dealer by a wholesaler or of a wholesaler by a dealer. While the recommended decision, as amended, recommends that such ownership or control should be prohibited, the recommended amendment prohibits only certain specified ownerships. Such section should be revised to guard against evasionary practices which might be accomplished through subsidiaries or affiliates of a particular handler, or through partial or indirect ownership or agency, or through control of an interest, either direct or indirect, in a wholesaler or a dealer. Appropriate language covering these matters should be placed in such section.

2(c) *Manufacturer-buyer relationship.* Somewhat similar problems may exist in the relationship between manufacturers and dealers. Here, too, several dealers can band together to produce their own serum and virus for sale to themselves. In this situation, there is no direct merger or consolidation of buyer classifications, because "manufacturer" is not a buyer classification for present price posting purposes. Therefore, if any such dealer-manufacturer arrangements present a regulatory problem, such problem cannot be solved by the simple incentive removing device herein provided for mergers of two buyer classifications, i.e., to deny the preferred buyer classification. This is so because in manufacturer-dealer combinations there is no preferred buyer classification to deny.

This necessarily means that more drastic measures would be required to cope with ownership or control of manufacturers by dealers or wholesalers. These might include a direct prohibition of any sales by a manufacturer to any such interested dealer or wholesaler, or an absolute prohibition against handlings by certain business organizations which necessarily contemplate such an arrangement. Other controls of equally drastic nature might be required if the problem becomes a serious one.

However, the present hearing record discloses no need to take such drastic action at this time with reference to dealer or wholesaler owned or controlled manufacturers. A portion of the stock of two or three small proprietary corporate manufacturers is owned by dealers, but the percentage of such stock ownership in such corporations was not disclosed on the record. This practice of owning stock in proprietary corporate manufacturers by members of the buyer class does not appear to be a disturbing element in the marketing of the products. Such proprietary manufacturers pay dividends on the basis of stock ownership only. Opinion was expressed that such ownership should not be permitted but the record does not disclose facts which would support a conclusion that unfair competitive advantage was gained by such manufacturers or such owners of stock because of such ownership. It is conceivable that such practices could adversely affect the regulatory scheme under the order should they be abused but in that event the amendatory processes are available to correct the situation.

The record does show that patronage refunds by certain dealer cooperative manufacturers are disruptive but this will be corrected by prohibiting such patronage refunds. Whether or not the restriction of ownership of stock or membership in a manufacturer to a particular buying class or the restriction of sales to such members in and of itself has been disruptive to orderly marketing and to the regulatory scheme of the order cannot be determined with sufficient certainty from the information contained in the present hearing record to warrant action as drastic as that proposed. Evidence regarding such ownership and sales restriction was inextricably connected with the deleterious effect of the payment of patronage dividends to members of such an organization. It would appear that restriction of ownership of stock or memberships in a manufacturer to a particular buying class only and the restriction of sales to such members, under certain circumstances, could result in disorderly marketing and constitute unfair competition. However, should such practices under the proposed order create disorderly marketing, unfair competition, or result in a breaking down of the regulatory scheme under the act and order, future amendatory proceedings are available for purposes of remedying the situation.

The record does show, however, that certain other practices between manufacturers and certain buyers should be controlled more rigidly. Certain manufacturers seeking to obtain selling advantages have engaged in practices which also tend to a breakdown of the classification scheme. These practices usually take the form of utilizing a buyer as an agent or distributional outlet, but can also take the form of control over such a buyer. Where a manufacturer appoints a wholesaler as his agent or branch office, it places the wholesaler in the position of being able to offer two prices for the same commodity to the same buyer, one price in his capacity as a wholesaler, the other in his representative capacity for the manufacturer. This gives the associated manufacturer and wholesaler a competitive advantage over their respective manufacturer and wholesaler competitors who can offer only one price for a product for each buyer classification. By utilizing two prices, such "agency" arrangements can be employed to offer either of the two prices at will, on a geographic or any other basis, to lure business from competitors or otherwise employ selective pricing for competitive advantage. Such a competitive advantage based on being able to offer two or more available prices to the same buyer is clearly contrary to the principle and purposes of classified price posting and should be prohibited. The effectiveness of classified price posting also tends to break down where manufacturers own or control wholesalers who purport to post their own different posted prices but tend to divert business directly to the manufacturer if the occasion warrants.

Similar problems exist where manufacturers utilize or control dealers in such fashion. By either applying or not applying the "agency" device to an actual dealer situation, the manufacturers can offer either the consumer or dealer posted price, depending on competitive advantage, even though the physical distribution of the serum and virus through the dealer to the consumer is precisely the same in either case. The legalistic agency device should not be available to enable the offering of two prices at will for essentially the same sale to the consumer through a dealer.

Accordingly, it is concluded that manufacturers should be prohibited from selling serum and virus through agents, representatives or branch houses which also are wholesalers or dealers or selling serum or virus to wholesalers or dealers in which the manufacturer owns or controls an interest. Because the manufacturer has complete control of its own investments no minimum percentage of stock ownership need here be specified.

Allied Laboratories, Inc., et al. excepted to the language contained in recommended new § 131.58 covering manufacturer-buyer relationship, for the same reasons given for its exception to the language of § 131.8. For the same reasons given for the revision of § 131.8, the recommended new § 131.58 should be revised to guard against evasionary practices which might be accomplished through subsidiaries or affiliates of a particular handler, or through partial or indirect ownership or agency, or through control of an interest, either direct or indirect, in a wholesaler or a dealer. Appropriate language covering these matters should be placed in such section.

Rulings on proposed findings and conclusions. At the conclusion of the hearing of July 24, 1956, briefs were filed on behalf of the Control Agency and Armour Veterinary Laboratories, and at the conclusion of the reopened hearing of July 21, 1958 and December 1, 1958, briefs were filed on behalf of Allied Laboratories, Inc., et al.; Baldwin Laboratories, Inc.; Iowa Cooperative Association, et al., and Iowa Farm Supply Company. The proposed findings and conclusions contained therein have been discussed or covered generally in this decision and all were carefully considered along with the evidence in the record in making the findings and reaching the conclusions hereinafter set forth. To the extent that the proposed findings and conclusions contained in the aforesaid briefs are inconsistent with the findings and conclusions contained herein such proposed findings and conclusions are denied.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

Upon the basis of the evidence adduced at the hearings, and the records thereof, it is hereby found that:

(1) The said marketing agreement as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby proposed to be further amended, regulates the handling of anti-hog-cholera serum and hog-cholera virus in the same manner as, and contains only such terms and conditions as are contained in the said marketing agreement upon whic hearings have been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exemptions are hereby overruled for the reasons previously stated in this decision.

In their exceptions Iowa Cooperative Association, et al., request that if the prohibitions against the payment of patronage dividends are adopted in the final order, the effective date of such provisions be postponed for a period of ten months so as to allow time for reorganization of the affected firms. It is contemplated that sufficient time will be given such firms for reorganization. Some time will necessarily elapse after the issuance of this decision and prior to the issuance of a final order for the purpose of submittal of the proposed marketing agreement to the members of the industry. In the past this has usually taken two to three months. This will be taken into consideration in setting an effective date for the provisions regarding the payment of patronage dividends if the proposed marketing agreement is approved by the required number of signatories.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus" and "Order Amending the Order Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Done at Washington, D.C. this 7th day of April, 1960.

E. L. PETERSON,
Assistant Secretary.

Order[1] Amending the Order, as Amended, Regulating the Handling of Anti-Hog-Cholera Serum and Hog-Cholera Virus

§ 131.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to Public Law 320, 74th Congress, approved August 23, 1935 (49 Stat. 781; 7 U.S.C. 851 et seq.) and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders applicable to Anti-Hog-Cholera Serum and Hog-Cholera Virus (9 CFR Part 132) public hearings were held at Kansas City, Missouri, on July 24, 1956, and at Chicago, Illinois, on July 21–22, and December 1–11, 1958, pursuant to notices thereof published in the FEDERAL REGISTER (21 F.R. 4520, 23 F.R. 4432, 6379, 7587) on proposed amendments to the Marketing Agreement, as amended, and to the order, as amended (9 CFR Part 131), regulating the handling of anti-hog-cholera serum and hog-cholera virus. Upon the basis of the evidence adduced at the hearings, and the record thereof, it is hereby found that:

(1) The said marketing agreement as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby proposed to be further amended, regulates the handling of anti-hog-cholera serum and hog-cholera virus in the same manner as, and contains only such terms and conditions as are contained in the said marketing agreement upon which hearings have been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of anti-hog-cholera serum and hog-cholera virus shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order is hereby amended as follows:

§ 131.8 [Amendment]

1. Amend § 131.8 by substituting (1) and (2) for (a) and (b) respectively, and place (a) just prior to the first sentence of the section and add the following at the end of such section:

(b) Notwithstanding the provisions of paragraph (a) of this section a person shall not be classified as a wholesaler, or shall be deleted from the list of qualified wholesalers maintained by the Control Agency, if such person or its subsidiary or affiliate, (1) owns or controls, either directly or indirectly, an interest, in whole or in part, in a dealer, or (2) appoints or utilizes any dealer as his agent in any matter related to the handling of serum or virus, or appoints or utilizes any dealer as a branch house or distributional outlet for serum or virus, either directly or indirectly, or (3) where an interest, in whole or in part, in such person is owned or controlled, either directly or indirectly, by any dealer or dealers: *Povided, however,* That if such person or its subsidiary or affiliate is a corporation, ownership both direct and indirect by dealers of a combined interest not to exceed 10 percent of the total outstanding stock of all classes of such corporation shall not disqualify such person for wholesaler status: *Provided, further,* That this paragraph shall not apply to a farmer cooperative association.

2. Add a new § 131.19 to read as follows:

§ 131.19 Farmer Cooperative Association.

"Farmer Cooperative Association" as used in this part means a cooperative association as defined in 12 U.S.C. sec. 1141j(a), including a federation of such cooperative associations and any corporate organization, organized under a cooperative law or operating on a cooperative plan, which is owned and controlled, directly or indirectly, by such farmer cooperative associations or a federation of the same.

3. Amend § 131.51 to read as follows:

§ 131.51 Filing of price list; suspension and cancellation thereof.

(a) Except as provided in § 131.57, each manufacturer and wholesaler handler shall file with the Secretary and the control agency a separate list of his selling prices in the United States, including terms of sale and discounts, to each class of buyer defined in this subpart or under the provisions thereof, other than those specified in § 131.55. Each such handler's prices, discounts, and terms of sale shall be uniform for all buyers in each classification of the trade as defined by the control agency pursuant to this subpart.

(b) Each manufacturer and wholesaler handler's prices shall be deemed not to be uniform for all buyers in each classification of trade if such handler or its subsidiary or affiliate pays, or agrees to pay, to any purchaser of serum or virus patronage dividends or patronage refunds based on such purchases, or pays, or agrees to pay, to any purchaser of serum or virus, refunds based on the volume of purchases of serum or virus, or pays or agrees to pay to any purchaser any other discount or refund not im-

[1] This order shall not become effective unless and until the requirements of § 132.14(b) of this chapter have been met.

mediately ascertainable from a posted price at the time of sale, or bases upon patronage any payment right or obligation, either directly, indirectly, prospectively, or retrospectively, or associates with or ties into a sale, or sales, directly, indirectly, prospectively or retrospectively, any consideration, right or obligation, the value of which is not immediately ascertainable from the posted price at the time of sale: *Provided, however,* That a farmer cooperative association may pay, or agree to pay, patronage dividends.

(c) If the Secretary has reason to believe that any price list, term of sale or discount, in whole or in part, violates the provisions of this section he may immediately suspend the effectiveness of such price list, term of sale or discount, in whole or in part, pending an investigation and shall report such suspension to the control agency, who shall in turn immediately notify the handler whose price filing has been suspended. The Secretary may declare a filed price, term of sale or discount, in whole or in part, to be ineffective, if, after an investigation and opportunity to be heard has been afforded the handler whose price filing is questioned, the Secretary finds from the facts presented during such investigation that such price list, term of sale or discount, in whole or in part, violates the provisions of this section.

4. Amend § 131.54 to read as follows:

§ 131.54 Offers, contracts, sales.

Except as provided in § 131.57, each manufacturer and wholesaler handler shall make no sales unless he has an effective price list, including discounts and terms of sales, as set forth in § 131.51, filed with the control agency. No manufacturer or wholesaler handler shall make any bid, or offer to sell, or enter into an agreement or contract to sell serum or virus, or in any manner sell serum or virus at prices, discounts, or terms of sale different from those set forth in his filed price list which is effective at the time any such bid, offer, agreement, contract, sale or delivery is made. No manufacturer or wholesaler handler or its subsidiary or affiliate shall pay, or agree to pay, to any purchaser of serum or virus, patronage dividends or patronage refunds based on such purchases; or shall pay or agree to pay, to any purchaser of serum or virus refunds based on the volume of purchases of serum or virus; or shall pay, or agree to pay, to any purchaser any other discount or refund not immediately ascertainable from a posted price at the time of sale; or shall base upon patronage any payment, right or obligation, either directly, indirectly, prospectively or retrospectively; or shall associate with or tie into a sale, or sales, directly, indirectly, prospectively or retrospectively, any consideration, right or obligation, the value of which is not immediately ascertainable from the posted price at the time of sale: *Provided, however,* That a farmer cooperative association may pay or agree to pay patronage dividends. No manufacturer or wholesaler handler shall file a new or amended price list until his most recently filed price list for any class of buyers becomes effective, and no such handler shall withdraw any filed price list prior to the effective date of such price list.

5. Add a new § 131.57 to read as follows:

§ 131.57 Purchases by manufacturers.

A manufacturer of serum or virus may purchase serum or virus from another manufacturer at a negotiated price. Such purchaser shall not sell or offer for sale the purchased product to wholesalers, dealers or consumers at prices (including discounts and terms of sale) lower than the currently effective posted prices for such classes of purchasers of the manufacturer from whom he purchased such product: *Provided, however,* That in the event such purchaser purchases the same product from two or more manufacturers said purchaser shall not sell or offer for sale such purchased product to wholesalers, dealers or consumers at prices (including discounts and terms of sale) lower than the highest effective prices currently posted by his suppliers for wholesalers, dealers, and consumers. The prices, discounts and terms of sale filed by a manufacturer-buyer for serum or virus shall be uniform for all buyers in each classification of the trade regardless of whether it is of his own manufacture or has been purchased from one or more other manufacturer-handlers.

6. Add a new § 131.58 to read as follows:

§ 131.58 Manufacturer handling.

A manufacturer-handler or its subsidiary or affiliate is prohibited from selling serum or virus to or through any wholesaler or dealer which such manufacturer or its subsidiary or affiliate appoints or utilizes as his agent in any matter related to the handling of serum or virus, either directly or indirectly, or which such manufacturer or its subsidiary or affiliate appoints or utilizes as a branch house or distributional outlet for serum or virus, either directly or indirectly, or in which such manufacturer, its subsidiary or affiliate, owns or controls an interest, either direct or indirect, or which such manufacturer or its subsidiary or affiliate utilizes in any other manner in the handling of serum or virus.

7. Add a new § 131.60 to read as follows:

§ 131.60 Patronage dividends and refunds.

The payment of, or agreement to pay, patronage dividends or patronage refunds based on purchases of serum or virus to the purchaser thereof, or the payment of, or agreement to pay, refunds based on the volume of purchases of serum or virus to the purchaser thereof, or the payment of, or agreement to pay, to any purchaser of serum or virus any other discount or refund not immediately ascertainable from the applicable posted price at the time of sale; or basing upon patronage any payment, right or obligation, either directly, indirectly prospectively or retrospectively; or associating with or tieing into a sale, or sales, directly, indirectly, prospectively or retrospectively, any consideration, right or obligation, the value of which is not immediately ascertainable from the posted price at the time of sale, by manufacturer and wholesaler handlers or their subsidiaries or affiliates is prohibited: *Provided, however,* That a farmer cooperative association may pay, or agree to pay, patronage dividends.

§ 131.71 [Amendment]

8. Add a new paragraph (j) to § 131.71 to read as follows:

(j) The payment of, or agreement to pay, patronage dividends, patronage refunds, refunds based on the volume of purchases of serum or virus or other discounts, or refunds not immediately ascertainable from a posted price at the time of sales; or basing upon patronage any payment, right or obligation, either directly, indirectly, prospectively or retrospectively; or associating with or tieing into a sale, or sales, directly, indirectly, prospectively, or retrospectively, any consideration, right or obligation, the value of which is not immediately ascertainable from the posted price at the time of sale; excepting, however, the payment of or agreement to pay, patronage dividends by a farmer cooperative association.

[F.F. Doc. 60-3309; Filed, Apr. 11, 1960; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 146]

DAIRY ANIMALS

Intramuscular or Intravenous Antibiotic Preparations; Labeling

Notice is given that the Commissioner of Food and Drug, on his own initiative, and in accordance with the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507(f), 59 Stat. 463, as amended; 21 U.S.C. 357(f)), and under authority delegated to him by the Secretary of Health, Education, and Welfare (22 F.R. 1045, 23 F.R. 9500) hereby offers an opportunity to all interested persons to submit their views in writing to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER on the proposal set forth below. Written views and comments should be filed in quintuplicate.

The Commissioner proposes to issue a regulation requiring certifiable antibiotic drugs intended for use in dairy animals, and which are administered intramuscularly or intravenously, to bear a specific warning, in order to prevent milk taken from such dairy animals so treated from entering the milk supply. The proposed regulation is based upon the following information in possession of the Food and Drug Administration.

During the past few years the quantities of the various antibiotic preparations certified for use in the prevention and treatment of infections of dairy animals by the intramuscular and/or intravenous routes of administration have increased substantially. For example, the quantity of the combination drug penicillin and dihydrostreptomycin (dry and in suspension) certified for use in animals by injection has steadily increased since 1955. In that year the batches certified contained a total of approximately 1.4 trillion units of penicillin and 2.7 million grams of dihydrostreptomycin. In 1956, 1957, 1958, and 1959, they contained approximately 3.8, 6.4, 13.9, and 34.2 trillion units of penicillin and 7.4, 9.2, 20.2, and 48.1 million grams of dihydrostreptomycin, respectively. Not only are more animals receiving antibiotics by injection, but substantially larger amounts of the drugs are administered per dose. Although the labeling for most of the penicillin-containing drugs recommends for injections of large animals a daily dose of from 2,000 units to 4,000 units per pound of body weight of the animal, doses up to five times the lower recommended dose are commonly used.

When a dairy animal is injected with sufficient quantities of an antibiotic preparation, detectable amounts of the drug are excreted through the animal's milk. The amount of drug excreted and the time of excretion depend upon the quantity of the drug administered per dose and the number of doses, as well as on the kind of preparation injected. Thus, the practice of injecting dairy animals with antibiotic preparations may result in the presence of these drugs in the milk supply unless the milk from treated animals is discarded for an appropriate time. Although the length of time that each antibiotic will persist in the milk of dairy animals treated with various dosages and kinds of antibiotic preparations by injection has not been definitely determined, from the Administration's experience with this class of drug, residues of some drugs may persist for days after the latest injection. Therefore, in the interest of the public health, this potential portal of entry for antibiotics in the milk supply must be closed, and to do so users of these drugs must be informed through appropriate labeling. Therefore, the Commissioner proposes to amend the regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR Part 146) by adding thereto the following new section:

§ 146.14 Antibiotic and antibiotic-containing drugs intended for use in the prevention or treatment of infections of veterinary animals by the intramuscular or intravenous route; labeling.

Whenever the labeling of an antibiotic drug included in the regulations in this chapter suggests or recommends its use in the prevention or treatment of infections of veterinary animals by the intramuscular or intravenous route of administration, the label of such drugs shall bear either the statement "Warning: Not for use in dairy animals since this use will result in contamination of the milk with the antibiotic" or the statement "Warning: Milk taken from treated dairy animals within _____ hours after the latest injection must not be used for human consumption," and the blank has been filled in with that figure which shall not be greater than 96, which the Commissioner has authorized the manufacturer of the drug to use. The Commissioner shall determine what such figure shall be from information submitted by the manufacturer which the Commissioner considers is adequate to prove that time after the latest injection that the milk from treated animals will contain no residues of the antibiotic.

Dated: April 1, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-3297; Filed, Apr. 11, 1960; 8:47 a.m.]

Notices

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13383; FCC 60M-604]

RAYMOND D. BALCH

Order Scheduling Hearing

In the matter of Raymond D. Balch, Seattle, Washington, Docket No. 13383; suspension of amateur radio operator license (W8ZVL).

The Hearing Examiner having under consideration a "Motion to Continue Proceedings" filed in the above-entitled matter on March 31, 1960, by the Chief, Safety and Special Radio Services Bureau, Federal Communications Commission, which Motion would continue the scheduled hearing from April 13, 1960, to May 16, 1960, and

It appearing that there are circumstances in this case which require that the Motion be granted, and that good cause therefor has been shown,

It is ordered, This 5th day of April 1960, that the aforesaid Motion is granted and that the hearing in this matter be and it hereby is scheduled to commence at 10:00 a.m., May 16, 1960, in the Commission's offices in Washington, D.C.

Released: April 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3316; Filed, Apr. 11, 1960; 8:49 a.m.]

[Docket Nos. 13341-13344; FCC 60M-612]

CREEK COUNTY BROADCASTING CO. ET AL.

Order Continuing Hearing

In re applications of T. M. Raburn, Jr., tr/as Creek County Broadcasting Co., Sapupla, Oklahoma, Docket No. 13341, File No. BP-11605; Tinker Area Broadcasting Co., Midwest City, Oklahoma, Docket No. 13342, File No. BP-12410; Sapupla Broadcasting Corporation, Sapupla, Oklahoma, Docket No. 13343, File No. BP-12595; M. W. Cooper, Midwest City, Oklahoma, Docket No. 13344, File No. BP-12887; for construction permits.

The Hearing Examiner having under consideration a "Petition for Extension of Time" filed April 4, 1960, in the above-entitled proceeding in behalf of Sapupla Broadcasting Company, in which petition the other applicants, through counsel, have joined;

It appearing that the extensions requested by the petitioner (according to the allegations of the petition) are required to enable the consulting radio engineers to examine drafts of detailed engineering exhibits exchanged on March 28, 1960, that some, if not all, of the said engineers are involved in other proceedings and require more time to complete their responsibilities in this case than the applicants originally contemplated, and that some of the applicants require more time than originally contemplated to prepare nonengineering exhibits;

It appearing further that the petition asserts that "It is expected that the additional time [requested] would assist the consultants of the parties in making informal contacts which may assist in curtailing disagreements and cross-examination and thereby expedite the progress of the proceeding at the formal hearing stage";

It appearing further that considering the time which has already elapsed between the date the above applications were initially scheduled for hearing and the present, "good cause" for granting the relief requested is deemed to have been demonstrated only if the petitioner's assurance, quoted above, to the effect that the additional time will be used to good advantage in expediting the progress of the proceeding, is carried out conscientiously;

It appearing further that counsel for the parties respondent and for the Chief of the Commission's Broadcast Bureau have consented to a grant of the petition;

It is ordered, This 6th day of April 1960, That the "Petition for Extension of Time" filed by Sapulpa Broadcasting Company is granted and that the date for exchange of engineering exhibits in final form and exchange of nonengineering exhibits is extended to May 9, 1960, the prehearing conference scheduled for April 28, 1960 is continued to May 31, 1960 and hearing scheduled for May 10, 1960 is continued to June 6, 1960, at 10:00 a.m., at the Commission's Offices, Washington, D.C.;

It is ordered further, In accordance with the above-quoted assertion of the petitioner, That on the occasion of the prehearing conference now scheduled for May 31 all the parties are to be prepared fully to discuss, and to spread upon the record, any and all stipulations it is hoped they will be able to reach which will have the effect of expediting the progress of the hearing, and to make known to each other at an informal conference to be held immediately after the formal prehearing conference, with Bureau Counsel designated as Chairman, as many of the objections as possible each may have to the other's exchanged exhibit material, with the objective in view of eliminating unnecessary objections at the hearing and deleting from the exhibits as much legally objectionable matter as possible.

Released: April 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3318; Filed, Apr. 11, 1960; 8:49 a.m.]

[Docket No. 13351; FCC 60M-603]

ROBERT L. OARE AND MARY MORRIS OARE

Order Continuing Hearing

In the matter of Robert L. Oare and Mary Morris Oare, 2531 Lucille Drive, Fort Lauderdale, Florida, Docket No. 13351; order to show cause why there should not be revoked the license for radio station WJ2909 aboard the vessel "Bob-O-Lou II."

On the oral request of counsel for the Chief, Safety and Special Radio Services Bureau, and without objection by respondent: *It is ordered,* This 5th day of April 1960, that the hearing now scheduled for April 6 is continued indefinitely.

Released: April 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3317; Filed, Apr. 11, 1960; 8:49 a.m.]

[Docket No. 12068 etc.; FCC 60M-597]

FLORENCE BROADCASTING CO., INC., ET AL.

Order Continuing Hearing Conference

In re applications of Florence Broadcasting Company, Inc., Brownsville, Tennessee, Docket No. 12068, File No. BP-10850; Charles R. Rudolph, Farley W. Warner, Richard S. Cobb and Mary Cobb, d/b as Catonsville Broadcasting Company, Catonsville, Maryland, Docket No. 13250, File No. BP-13150; Mary Cobb and Richard S. Cobb, d/b as Tenth District Broadcasting Co., McLean, Virginia, Docket No. 13251, File No. BP-13153; et al., Docket Nos. 13222, 13223, 13224, 13225, 13226, 13227, 13228, 13229, 13230, 13231, 13232, 13233, 13235, 13236, 13237, 13239, 13240, 13241, 13242, 13243, 13245, 13246, 13247, 13248, 13249.

The Hearing Examiner having under consideration a joint petition filed on April 4, 1960, by Catonsville Broadcasting Company and Tenth District Broadcasting Co., requesting that the date for exchange of final engineering exhibits by Group 3 in the above-styled proceeding be continued from April 5 to April

22, 1960, and that for the prehearing conference from April 11 to April 29, 1960; and

It appearing that petitioners' engineer is unable, for good cause shown, to complete their engineering exhibits within the prescribed time;

It further appearing that counsel for all of the applicants in Group 3 and for the Broadcast Bureau have consented to a grant of the relief requested in the petition;

It is ordered this 5th day of April 1960, that the petition be and the same is hereby granted and the time within which to exchange final engineering exhibits by the applicants in Group 3 in the above-entitled proceeding be and the same is hereby continued from April 5 to April 22, 1960, and the prehearing conference of such group now scheduled for April 11 to April 29, 1960.

Released: April 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3319; Filed, Apr. 11, 1960; 8:49 a.m.]

[Docket Nos. 13423, 13424; FCC 60M-596]

INDEPENDENT BROADCASTING CO., INC., AND HIGH FIDELITY MUSIC CO.

Order Scheduling Prehearing Conference

In re applications of Independent Broadcasting Company, Inc., Darien, Connecticut, Docket No. 13423, File No. BPH-2588; John R. Rieger, Jr., tr/as High Fidelity Music Co., Port Jefferson, New York, Docket No. 13424, File No. BPH-2622; for construction permits.

It is ordered, This 4th day of April 1960, that a prehearing conference, in accordance with § 1.111 of the rules, will be held in the above-entitled matter at 10:00 a.m. on April 26, 1960, in the offices of the Commission, Washington, D.C.

Released: April 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3320; Filed, Apr. 11, 1960; 8:49 a.m.]

[Docket Nos. 13448-13452; FCC 60M-607]

WTTT, INC. (WTTT) ET AL.

Order Scheduling Hearing

In re applications of WTTT, Inc. (WTTT), Arlington, Florida, Docket No. 13448, File No. BP-12059; Onslow Broadcasting Corporation (WJNC), Jacksonville, North Carolina, Docket No. 13449, File No. BP-12309; Ponce De Leon Broadcasting Company (WFOY), St. Augustine, Florida, Docket No. 13450, File No. BP-12322; Indian River Radio, Inc. (WMMB), Melbourne, Florida, Docket No. 13451, File No. BP-12479; Capitol Broadcasting Company, Incorporated (WRAL), Raleigh, North Carolina, Docket No. 13452, File No. BP-13130; for standard broadcast construction permits.

It is ordered, This 5th day of April 1960, that Millard F. French will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on June 6, 1960, in Washington, D.C.

Released: April 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-3321; Filed, Apr. 11, 1960; 8:49 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-4457 etc.]

N. APPLEMAN CO. ET AL.

Notice of Applications and Date of Hearing

APRIL 5, 1960.

Nathan Appleman d/b/a N. Appleman Company, Docket No. G-4457; Flournoy Drilling Company, Operator, et al., Docket No. G-13054; James Donoghue, Operator, Docket No. G-13088; Sherwood and Blohm, et al., Docket No. G-13092; P. & M. Oil Company, Docket No. G-14337; Israel Fork Gas Company, Docket No. G-14338; P. & M. Oil Company, Docket No. G-14339; Cities Service Oil Company, Docket No. G-14521; Cities Service Oil Company, Docket No. G-14524; Cities Service Oil Company, Docket No. G-14525; Cities Service Oil Company, Docket No. G-14526; Cities Service Oil Company, Docket No. G-14527; Cities Service Oil Company, Docket No. G-14528; Cities Service Oil Company, Docket No. G-14530; Cities Service Oil Company, Docket No. G-14531; Cities Service Oil Company, Docket No. G-14532; Cities Service Oil Company, Docket No. G-14533; Socony Mobil Oil Company, Inc., Docket No. G-14906; Socony Mobil Oil Company, Inc., Docket No. G-14907; Socony Mobil Oil Company, Inc., Docket No. G-14909; Socony Mobil Oil Company, Inc., Docket No. G-14910; Socony Mobil Oil Company, Inc., Docket No. G-14911; Socony Mobil Oil Company, Inc., Docket No. G-14912; Socony Mobil Oil Company, Inc., Docket No. G-14915; Socony Mobil Oil Company, Inc., Docket No. G-14916; Skelly Oil Company, Docket No. G-15912; Amerada Petroleum Corporation, Docket No. G-15917; J. D. Wrather, Jr., et al., Docket No. G-15918; Amerada Petroleum Corporation, Docket No. G-15919; Atlas Oil and Gas, Docket No. G-15980; Hudson Gas & Oil Corporation, Docket No. G-15989; Harvey McLean, Docket No. G-15990; B. M. Britain, Docket No. G-16014; Texaco Inc., Docket No. G-16017; Lewis Bros., Inc., Docket No. G-16018.

Delaware Gas Company, Docket No. G-16019; Hawn Brothers, Operator, et al., Docket No. G-16096; Skelly Oil Company, Operator, Docket No. G-16224; Keith F. Walker, Operator, Docket No. G-16289; Graham-Michaelis Drilling Company, Docket No. G-16306; Drew Petroleum, Inc., (Operator), et al., Docket No. G-16365; Trice Production Company, Docket No. G-16543; Joseph I. O'Neill, Jr., Operator, Docket No. G-16544; Champlin Oil & Refining Company, Docket No. G-16822; Skelly Oil Company, Docket No. G-16850; Caulkins Oil Company, Operator, et al., Docket No. G-16852; Norman V. Kinsey, Jr., et al., Docket No. G-16865; Petroleum, Inc., Docket No. G-16870; Kerr-McGee Oil Industries, Inc., Docket No. G-16871; C. H. Lyons, Jr., et al., Docket No. G-16905; Lucky Oil and Gas Company, Docket No. G-16914; American Petrofina, Incorporated, Docket No. G-16918; Colorado Oil and Gas Corporation, Docket No. G-16927; Apache Oil Corporation, Operator, Docket No. G-16941; John E. Lydle, et al., Docket No. G-16942; Herbert H. Smellie and Homer W. Myers, et al., Docket No. G-16943; Petro-Atlas, Incorporated, Docket No. G-16968; Hamman Oil & Refining Company, Docket No. G-16989; Johnson and French Oil Company, Docket No. G-17645; Blanco Oil Company, et al., Docket No. G-17906; Shell Oil Company, Docket No. G-18038; Home-Stake Production Company, Operator, Docket No. G-18237; Herman A. Flader, Docket No. G-18349; South Fork Gas Company, Docket No. G-18351; Mountain States Petroleum Corporation, Operator, Docket No. G-18356; Aztec Oil and Gas Company, Docket No. G-18371; Skelly Oil Company, Docket No. G-18403; Burt Kleiner, Operator, et al., Docket No. G-18426; Burt Kleiner, Operator, et al., Docket No. G-18427; Burt Kleiner, Operator, et al., Docket No. G-18428.

Arbuckle Oil & Gas Company, Docket No. G-18440; Laurel Fork Oil and Gas Company, Docket No. G-18593; Olsen Oils Inc., Operator, Docket No. G-18640; Calvert Drilling, Inc., et al., Docket No. G-18658; The Atlantic Refining Company, Docket No. G-18708; Horizon Oil & Gas Company, Docket No. G-18722; Home-Stake Production Company, Docket No. G-18734; Home-Stake Production Company, Docket No. G-18739; Robberson Investment Company, Docket No. G-18759; Philip Lemon, et al., Docket No. G-18794; J. M. Huber Corporation, Docket No. G-18795; Midwest Oil Corporation, Docket No. G-18798; G. H. Vaughn, Jr. (Operator), et al., Docket No. G-18829; Stekoll Petroleum Company, Docket No. G-18955; Calvert Drilling, Inc., Docket No. G-19014; Gulf Oil Corporation, Docket No. G-19144; William V. Conover, Docket No. G-19195; Moore, Moore and Miller, Docket No. G-19198; Sinclair Oil & Gas Company, Docket No. G-19222; W. O. Allen, Docket No. G-19236; Murray D. Stringer, Docket No. G-19247; Sinclair Oil & Gas Company, Operator, Docket No. G-19281; Texas National Petroleum Company, Docket No. G-19357; Petroleum Exploration, Inc. of Texas, et al., Docket No. G-19382; Cabot Carbon Company, Docket No. G-19528; An-Son Petroleum Corporation, Docket No. G-19542; N. V. Duncan Drilling Company, Operator, et al., Docket No. G-19613; Tennessee Gas

Transmission Company, Docket No. G-20056; The British-American Oil Producing Company, Docket No. G-20329; Arkansas Louisiana Gas Company, Docket No. G-20477.

Take notice that each of the above Applicants has filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing each to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications, amendments and supplements thereto, which are on file with the Commission and open to public inspection.

The respective Applicants produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket No.; Field and Location; and Purchaser

G-4457; Acreage in Finney County, Kans.; Northern Natural Gas Co.
G-13054; Mary Field, Jim Wells County, Tex.; C. V. Lyman.
G-13088; Acreage in Haskell County, Kans.; Colorado Interstate Gas Co.
G-13092; North Chesterville Field, Colorado County, Tex.; Tennessee Gas Transmission Co.
G-14337; Southwest District, Doddridge County, W. Va.; Equitable Gas Co.
G-14338; West Union District, Doddridge County, W. Va.; Equitable Gas Co.
G-14339; Southwest District, Doddridge County, W. Va.; Equitable Gas Co.
G-14521; West Panhandle Field, Gray County, Tex.; Phillips Petroleum Co.
G-14524; West Panhandle Field, Moore County, Tex.; Phillips Petroleum Co.
G-14525; West Panhandle Field, Moore County, Tex.; Phillips Petroleum Co.
G-14526; West Panhandle Field, Moore County, Tex.; Phillips Petroleum Co.
G-14527; West Panhandle Field, Gray County, Tex.; Phillips Petroleum Co.
G-14528; West Panhandle Field, Gray County, Tex.; Phillips Petroleum Co.
G-14530; West Panhandle Field, Moore County, Tex.; Phillips Petroleum Co.
G-14531; West Panhandle Field, Gray County, Tex.; Phillips Petroleum Co.
G-14532; Hugoton Field, Sherman County, Tex.; Phillips Petroleum Co.
G-14533; West Panhandle Field, Moore County, Tex.; Phillips Petroleum Co.
G-14906; Mustang Creek Field, Colorado County, Tex.; Shell Oil Co.
G-14907; Lisbon Field, Claiborne Parish, La.; Hassie Hunt Trust.
G-14909; Lisbon Field, Claiborne Parish, La.; Hassie Hunt Trust.
G-14910; Panhandle Field, Hutchinson County, Tex.; Shamrock Oil & Gas Corp.
G-14911; Panhandle Field, Wheeler County, Tex.; Warren Petroleum Corp.
G-14912; Velma Field, Stephens County, Okla.; Skelly Oil Co.
G-14915; Provident City Field, Lavaca County, Tex.; Shell Oil Co.
G-14916; Panhandle Field, Wheeler County, Tex.; Warren Petroleum Corp.
G-15912; Otero-Gallup Field, Rio Arriba County, N. Mex.; El Paso Natural Gas Co.
G-15917; Justis Fusselman and Justis Drinkard Fields, Lea County, N. Mex.; El Paso Natural Gas Co.
G-15918; Bloomington Field, Victoria County, Tex.; United Gas Pipe Line Co.
G-15919; Bagley Field, Lea County, N. Mex.; El Paso Natural Gas Co.
G-15980; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.
G-15989; Theall Area, Vermilion Parish, La.; United Gas Pipe Line Co.
G-15990; Theall Area, Vermilion Parish, La.; United Gas Pipe Line Co.
G-16014; West Panhandle Field, Moore County, Tex.; Panhandle Eastern Pipe Line Co.
G-16017; Hansford Field, Hansford County, Tex.; Northern Natural Gas Co.
G-16018; Key Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Co., Inc.
G-16019; Warren District, Upshur County, W. Va.; Hope Natural Gas Co.
G-16096; Neely Field, Duval County, Tex.; Southern Coast Corp.
G-16224; Hugoton Field, Finney County, Kans.; Northern Natural Gas Co.
G-16289; Dixie Field, Stephens County, Okla.; Lone Star Gas Co.
G-16306; Enns Area, Texas County, Okla.; Panhandle Eastern Pipe Line Co.
G-16365; Valentine Field, Lafourche Parish, La.; United Fuel Gas Co.
G-16543; St. Martinville Field, St. Martin Parish, La.; United Gas Pipe Line Co.
G-16544; Jalmat Field, Lea County, N. Mex.; El Paso Natural Gas Co.
G-16822; Acreage in Texas County, Okla.; Panhandle Eastern Pipe Line Co.
G-16850; Harper Field, Harper County, Kans.; Cities Service Gas Co.
G-16852; Little Worm Creek Field, Sweetwater County, Wyo.; Mountain Fuel Supply Co.
G-16865; Lerado Field, Reno County, Kans.; Panhandle Eastern Pipe Line Co.
G-16870; Keyes-Oklahoma Field, Cimarron County, Okla.; Colorado Interstate Gas Co.
G-16871; South Forgan Field, Beaver County, Okla.; Panhandle Eastern Pipe Line Co.
G-16905; Ragley Field, Beauregard Parish, La.; Trunkline Gas Co.
G-16914; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.
G-16918; Cotton Valley Field, Webster Parish, La.; United Gas Pipe Line Co.
G-16927; Hugoton Field, Seward County, Kans.; Panhandle Eastern Pipe Line Co.
G-16941; Salt Plains Field, Grant and Alfalfa Counties, Okla.; Cities Service Gas Co.
G-16942; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.
G-16943; Grant District, Pleasants County, W. Va.; Hope Natural Gas Co.
G-16968; South Blanco Pool, Lea County, N. Mex.; El Paso Natural Gas Co.
G-16989; Boonsville Bend Conglomerate Field, Wise County, Tex.; Natural Gas Pipeline Co. of America.
G-17645; Acreage in Lea County, N. Mex.; El Paso Natural Gas Co.
G-17906; Ingham Field, Crockett County, Tex.; El Paso Natural Gas Co.
G-18038; Big Mineral Field, Grayson County, Tex.; Lone Star Gas Co.
G-18237; Mocane Field, Beaver County, Okla.; Colorado Interstate Gas Co.
G-18349; East Panhandle Field, Wheeler County, Tex.; El Paso Natural Gas Co.
G-18351; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.
G-18356; Guymon-Hugoton Field, Texas County, Oklahoma and Sherman County, Tex.; Phillips Petroleum Co.
G-18371; W. Kutz Field, San Juan County, N. Mex.; El Paso Natural Gas Co.
G-18403; Camrich S. E. Field, Beaver County, Okla.; Natural Gas Pipeline Co. of America.
G-18426; Appling Field, Calhoun County, Tex.; Coastal States Gas Producing Co.
G-18427; Appling Field, Calhoun County, Tex.; Coastal States Gas Producing Co.
G-18428; Appling Field, Calhoun County, Tex.; Coastal States Gas Producing Co.
G-18440; Glenville District, Gilmer County, W. Va.; Hope Natural Gas Co.
G-18593; Union District, Ritchie County, W. Va.; Equitable Gas Co.
G-18640; Henderson Field, Winkler County, Tex.; El Paso Natural Gas Co.
G-18658; Eureka Field, Grant County, Okla.; Cities Service Gas Co.
G-18708; N. W. Doby Springs Field, Harper County, Okla.; Michigan Wisconsin Pipe Line Co.
G-18722; Perryton Field, Ochiltree County, Tex.; Northern Natural Gas Co.
G-18734; Dower Field, Beaver County, Okla.; Northern Natural Gas Co.
G-18739; East Antioch Field, Garvin County, Okla.; Lone Star Gas Co.
G-18759; Robberson Field, Garvin County, Okla.; Lone Star Gas Co.
G-18794; Union District, Ritchie County, W. Va.; Hope Natural Gas Co.
G-18795; Mocane Field, Beaver County, Okla.; Colorado Interstate Gas Co.
G-18798; N. E. Gate Field, Harper County, Okla.; Northern Natural Gas Co.
G-18829; West Lisbon Field, Claiborne Parish, La.; Texas Gas Transmission Corp.
G-18955; Acreage in San Juan County, N. Mex.; El Paso Natural Gas Co.
G-19014; Laverne Field, Harper County, Okla.; Michigan Wisconsin Pipe Line Co.
G-19144; Fostoria Wilcox Field, Montgomery County, Tex.; United Gas Pipe Line Co.
G-19195; Lapeyrouse Field, Terrebonne Parish, La.; United Gas Pipe Line Co.
G-19198; Bisti Gallup Field, San Juan County, N. Mex.; El Paso Natural Gas Co.
G-19222; Guymon Hugoton Field, Texas County, Okla.; Panhandle Eastern Pipe Line Co.
G-19236; Laverne Field, Harper County, Okla.; Michigan Wisconsin Pipe Line Co.
G-19247; Maxie-Pistol Ridge Field, Forrest County, Miss.; United Gas Pipe Line Co.
G-19281; Fox Field, Carter County, Okla.; All Star Gas Co.
G-19357; Levelland Field, Cochran County, Tex.; El Paso Natural Gas Co.
G-19382; Acreage in Meade County, Kans.; Panhandle Eastern Pipe Line Co.
G-19528; Laverne Field, Harper County, Okla.; Michigan Wisconsin Pipe Line Co.
G-19542; Laverne Field, Harper County, Okla.; Michigan Wisconsin Pipe Line Co.
G-19613; West Edmond Field, Oklahoma City, Okla.; Phillips Petroleum Co. and Continental Oil Co.
G-20056; Calhoun Field, Ouachita Parish, La.; Arkansas Louisiana Gas Co.
G-20329; Mr. Hope East Field, Logan County, Colo.; Kansas-Nebraska Natural Gas Co., Inc.
G-20477; Interest in Acreage in Ouachita Parish, La.; Texas Gas Transmission Corp.

The public convenience and necessity require that these matters be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 10, 1960 at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* that the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 26, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made; *Provided, further,* If a protest, petition to intervene or notice of intervention be timely filed in any of the above dockets, the above hearing date as to that docket will be vacated and a new date for hearing will be fixed as provided in § 1.20(b) (2) of the rules of practice and procedure.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3304; Filed, Apr. 11, 1960; 8:48 a.m.]

[Project No. 2100]

DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA

Notice of Application for Amendment of License

APRIL 4, 1960.

Public notice is hereby given that Department of Water Resources of the State of California, with principal offices at Sacramento, California, has filed application under the Federal Power Act (16 U.S.C. 791a–825r) for amendment of the license for water-power Project No. 2100, to be known as the Feather River Project, Oroville Division, and located on the Feather River and its tributaries near Oroville in Butte County, California, and affecting navigable waters of the United States and lands of the United States, some of which are within the Plumas and Lassen National Forests, and certain lands held in trust by the United States for Indians, to revise the proposed project so that it would be described as follows:

Oroville Dam and Reservoir. An earth-fill dam across the Feather River about 5.5 miles upstream from Oroville, about 735 feet high above streambed with crest length of 6,800 feet including gated spillway and flood control outlet section on the right abutment, two auxiliary earth-fill dams at low points in the periphery of the reservoir, and a reservoir with storage capacity of 3,523,000 acre-feet and water surface of 15,450 acres at normal surface elevation 900;

Oroville Power Plant. A massive concrete arch structure under the dam with initial installation of three 110,000-kw conventional generating units and three combined pump-turbine, motor-generator units each rated 90,000 kw as generator and with provision for ultimate installation of six additional similar units (three of each such type), two 30-foot diameter penstocks from reservoir to the powerhouse and two tailrace tunnels from powerhouse to the Feather River at the toe of the dam, and step-up transformers;

Thermalito Diversion Dam. A concrete gravity overflow-type dam across Feather River about one-quarter mile above highway bridge at Oroville, about 151 feet high above streambed, with crest length of 1,280 feet including 630 feet of radial crest gates, impounding a reservoir with storage capacity of 13,500 acre-feet at normal water surface elevation 225, and a powerhouse integral with the dam and containing two 1,350-kw units to provide station service power to the Oroville and Thermalito power plants;

Thermalito Canal. An earth-cut canal with capacity of 36,000 cfs, extending approximately 3 miles between Thermalito Diversion Dam and Thermalito Forebay;

Thermalito Forebay Dam. An earth-fill dam located in sec. 10, T. 19 N., R. 3 E., M.D.B & M., about 65 feet high with crest length of 2,700 feet and forming, with approximately 2¾ miles of earth levee, a reservoir with 14,000 acre-feet of storage capacity at normal water surface elevation 225; and Thermalito Power Plant at the toe of the dam with initial installation of one 33,500-kw conventional generating unit and two combined pump-turbine, motor-generator units each rated 31,500 kw as generator and with provision for ultimate installation of three additional similar units (two conventional and one pump-turbine unit);

Thermalito Afterbay Dam. An earth-fill dam with maximum height of 30 feet and total length of 41,000 feet located in secs. 18, 19, 30, 31, 32, 33 and 34, T. 19 N., R. 3 E., M.D.B & M., impounding a reservoir with gross storage capacity of 44,500 acre-feet;

Tail Channel. An earth-cut channel with capacity of 36,000 cfs, extending 7,500 feet between tailrace of Thermalito Power Plant and Thermalito Afterbay;

Two 230-kv switchyards. One located on the left bank of Feather River downstream from Oroville Dam and the other close to Thermalito Power Plant;

Two transmission lines. A 230-kv line between 230-kv switchyards at Thermalito and Oroville Power Plants and a 13.8-kv line connecting the power plants at Oroville, Thermalito Diversion, and Thermalito Afterbay Dams; and

Palermo Pumping Plant. Located on left abutment downstream from Oroville Dam, to supply Palermo Irrigation Canal.

Other license changes. The application further proposes the deletion of license Articles 33 and 34 and the modification of Article 29, all of which pertain to the protection of fish resources, and the modification of Article 18 as it pertains to the interests of navigation.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last date upon which protests or petitions may be filed is May 9, 1960. The application is on file with the Commission for inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-3305; Filed, Apr. 11, 1960; 8:48 a.m.]

[Docket No. G-16756 etc.]

PONTIAC REFINING CORP. ET AL.

Notice of Applications and Date of Hearing

APRIL 4, 1960.

Pontiac Refining Corporation, Operator, et al., Docket No. G-16756; Herman and George R. Brown, Docket No. G-19020; Sinclair Oil & Gas Company, Docket No. G-19212; McCall Drilling Company, Inc., Docket No. G-19238; John R. Thomey, Docket No. G-19809; Arkansas Fuel Oil Corporation, Docket No. G-20140; Jack G. Howe, et al., Docket No. G-20222; Floyd W. Sibert, Docket No. G-20227; E. C. Miller and Earl Knotts, Docket No. G-20254; Northern Natural Gas Producing Company, Docket No. G-20298; [1] Mississippi River Fuel Corporation, Docket No. G-20582; George Jackson, Docket No. CI60-12.

Take notice that each of the above Applicants has filed an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon service, as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications, and any amendments thereto, which are on file with the Commission and open to public inspection.

The respective Applicants seek permission and approval to abandon service as indicated below:

Docket Nos.; Field and Location; Purchaser; and Docket in Which Sale Was Authorized

G-16756; LaCopita Field, Duval County, Tex.; Unit Gas Company, Inc.; G-12553.
G-19020; Bloomington Field, Victoria County, Tex.; United Gas Pipe Line Co.; G-6884.
G-19212; Hayes Field, Calcasieu and Jefferson Davis Parishes, La.; Trunkline Gas Co.; G-2919.
G-19238; DeKalb District, Gilmer County, W. Va.; Hope Natural Gas Co.; G-7989.
G-19809; Sardis District, Harrison County, W. Va.; Hope Natural Gas Co.; G-8172.
G-20140; Kingsville East Field, Kleberg County, Tex.; Texas Eastern Transmission Corp.; G-11185.
G-20222; Lincoln District, Tyler County, W. Va.; Hope Natural Gas Co.; G-10711.
G-20227; Troy District, Gilmer County, W. Va.; Hope Natural Gas Co.; G-9561.
G-20254; Washington District, Calhoun County, W. Va.; Hope Natural Gas Co.; G-8136.
G-20298; No. 1 Bohn Well, Hugoton Field, Morton County, Kans.; Panhandle Eastern Pipe Line Co.; G-5716.
G-20582; Belle Bower Field, DeSoto Parish, La.; Tennessee Gas Transmission Co.; G-8575.
CI60-12; Skin Creek District, Lewis County, W. Va.; Equitable Gas Co.; G-13825.

Each application herein, except in Docket No. G-20298, states that the volume of gas now available for delivery under the related gas sales contract has been depleted or has declined to a point where it is no longer economically feasible to continue operation.

[1] Docket No. G-20298 was originally filed as a petition to amend the certificate issued to Applicant in Docket No. G-5716, but has been accepted for filing as an application to abandon service.

The Applicant in Docket No. G–20298 was heretofore authorized in Docket No. G–5716 to render service to Panhandle Eastern Pipe Line Company (Panhandle) from the No. 1 Bohn Well and to Northern Natural Gas Company (Northern) from other acreage in the Hugoton Field. The application herein states that on August 11, 1957, the sale of its interest in the gas from the subject unit to Panhandle terminated pursuant to an agreement dated September 4, 1956, among Northern, Panhandle and Applicant, wherein it was further agreed that, from and after August 11, 1957, Applicant would sell its interest in the gas from said well to Northern.

These related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on May 10, 1960, at 9:30 a.m., e.d.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before April 26, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–3306; Filed, Apr. 11, 1960; 8:48 a.m.]

[Project No. 2150]

PUGET SOUND POWER & LIGHT CO.

Notice of Application for Amendment of License

APRIL 7, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Puget Sound Power & Light Company, licensee for Project No. 2150, for amendment of its license for the project to include therein approximately 75.50 acres of lands of the United States within Mt. Baker National Forest occupied by its Lower Baker River development presently under a Commission minor-part license as Project No. 777. Pending is an application for surrender of the minor-part license.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is May 23, 1960. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–3307; Filed, Apr. 11, 1960; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

APRIL 1, 1960.

Notice of an application, Serial No. Anchorage 033201, for withdrawal and reservation of lands was published as Federal Register Document No. 57–8432 on page 8125 of the issue for October 12, 1957. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 295, such lands will be at 10:00 a.m. on May 6, 1960, relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

T. 12 N., R. 4 W., S.M.,
Sec. 1: SW¼NW¼, NW¼SW¼, S½SW¼, NE¼SW¼;
Sec. 2: S½ of Lot 34.

Containing 202.5 acres.

L. T. MAIN,
Operations Supervisor.

[F.R. Doc. 60–3288; Filed, Apr. 11, 1960; 8:46 a.m.]

Office of the Secretary

IMPORTS OF RESIDUAL FUEL OIL TO BE USED AS FUEL; DISTRICTS I–IV

Third Adjustment in Maximum Level

Pursuant to paragraph (e) of section 2 of Presidential Proclamation 3279, as amended, the maximum level of imports into Districts I–IV of residual fuel oil to be used as fuel shall be 490,934 barrels daily for the allocation period January 1, 1960, through June 30, 1960. This action constitutes an adjustment upward of the maximum level (425,000 barrels daily) now in effect in those Districts. Neither the present level nor the adjusted level includes residual fuel oil withdrawn from bonded warehouse for ships' supplies or for exportation.

ELMER F. BENNETT,
Acting Secretary of the Interior.

APRIL 9, 1960.

[F.R. Doc. 60–3367; Filed, Apr. 11, 1960; 10:28 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3865]

SKIATRON ELECTRONICS AND TELEVISION CORP.

Order Summarily Suspending Trading

APRIL 5, 1960.

The common stock, par value 10 cents per share of Skiatron Electronics and Television Corporation, being listed and registered on the American Stock Exchange, a national securities exchange; and

The Commission being of the opinion that the public interest requires the summary suspension of trading in such security on such Exchange and that such action is necessary and appropriate for the protection of investors; and

The Commission being of the opinion further that such suspension is necessary in order to prevent fraudulent, deceptive or manipulative acts or practices, with the result that it will be unlawful under section 15(c)(2) of the Securities Exchange Act of 1934 and the Commission's Rule 15c2–2 thereunder for any broker or dealer to make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of such security, otherwise than on a national securities exchange;

It is ordered, Pursuant to section 19 (a)(4) of the Securities Exchange Act of 1934 that trading in said security on the American Stock Exchange be summarily suspended in order to prevent fraudulent, deceptive or manipulative acts or practices, this order to be effective for a period of ten (10) days, April 6, 1960 to April 15, 1960, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60–3292; Filed, Apr. 11, 1960; 8:46 a.m.]

[File No. 7–2066]

TRANSITRON ELECTRONIC CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

APRIL 6, 1960.

In the matter of application of the Philadelphia-Baltimore Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Transitron Electronic Corporation; File No. 7–2066.

Upon receipt of a request, on or before April 22, 1960 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-3293; Filed, Apr. 11, 1960; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

[BDSA Emergency Delegation 1, as amended April 7, 1960]

EMERGENCY DELEGATION OF AUTHORITY TO REGIONAL PRODUCTION DIRECTORS OF THE BUSINESS AND DEFENSE SERVICES ADMINISTRATION OR ITS SUCCESSOR AGENCY

1. In the event of attack upon the United States each Regional Production Director of BDSA will exercise, within his region, control in the interest of national defense of the production, distribution and use of all materials and facilities as defined in the Defense Production Act of 1950, as amended, except:

(1) Food and the domestic distribution of farm equipment and commercial fertilizer;

(2) Petroleum, gas, solid fuels and electric power; and

(3) The use of domestic transportation, storage and port facilities.

2. Pursuant to Executive Order 10480, as amended, Defense Mobilization Order I-7, as amended, and Department of Commerce Order No. 152, as revised and amended, with respect to the materials and facilities as set out in the preceding paragraph, and for the purposes therein set forth, each Regional Production Director of BDSA, within his region, is hereby delegated, with power to redelegate, the priorities and allocation powers provided in section 101(a) of the Defense Production Act of 1950, as amended,[1] together with such other priorities and allocation and related power and authority as may hereafter be vested in the Administrator of the Business and Defense Services Administration or its successor agency. In connection therewith, there is hereby delegated the power and authority provided in sections 704, 705, and 706 of the Defense Production Act of 1950, as amended.[2]

3. The delegations provided for in paragraphs 1 and 2 to each Regional Production Director of BDSA shall be exercised only during such periods of time as communications between such Regional Production Director and the national headquarters of BDSA or its successor agency are inoperative.

4. In the event of the death, disability or other nonavailability of any Regional Production Director of BDSA, the following persons shall act in that capacity in the order of succession indicated below:

(1) The Regional Emergency Planning Coordinator for Department of Commerce for that region;

(2) Designated BDSA Executive Reservists within that region in the order determined by the BDSA Administrator;

(3) The Manager of the Department of Commerce Field Office nearest the headquarters of the OCDM Regional Office for that region.

5. The authority herein delegated shall be exercised in conformity with policies, rules, regulations and orders of the Office of Civil and Defense Mobilization and the Business and Defense Services Administration, or their successor agencies.

This amended delegation shall take effect April 7, 1960.

BUSINESS AND DEFENSE SERVICES ADMINISTRATION,
WILLIAM A. WHITE, Sr.,
Administrator.

[F.R. Doc. 60-3303; Filed, Apr. 11, 1960; 8:48 a.m.]

[1] Section 101(a) of the Defense Production Act of 1950, as amended provides as follows:

"The President is hereby authorized (1) to require that performance under contracts or orders (other than contracts of employment) which he deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order, and, for the purpose of assuring such priority, to require acceptance and performance of such contracts or orders in preference to other contracts or orders by any person he finds to be capable of their performance, and (2) to allocate materials and facilities in such manner, upon such conditions, and to such extent as he shall deem necessary or appropriate to promote the national defense."

Among the types of action which might be taken under the priorities and allocations powers are the following:

(1) To require preference in the performance of a contract or order.

(2) Issuance of "set-aside" order requiring producer to reserve part of production for certain purposes.

(3) Require use of a producer's facilities for production of designated products (allocation of facilities).

(4) Establishment of inventory restrictions.

(5) Limit delivery of materials to designated purchasers or classes of purchasers (allocation of materials).

[2] Section 704 provides authority to issue regulations.

Section 705 provides authority to obtain information.

Section 706 provides authority to apply to courts for injunctive relief restraining violations or enforcing compliance with orders and regulations.

Office of the Secretary

MORLAN J. GRANDBOIS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of March 26, 1960.

Dated: March 26, 1960.

MORLAN J. GRANDBOIS.

[F.R. Doc. 60-3260; Filed, Apr. 8, 1960; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

MARK WEST LIVESTOCK AUCTION ET AL.

Proposed Posting of Stockyards

The Chief of the Packers and Stockyards Branch, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the act.

Mark West Livestock Auction, Santa Rosa, Calif.

Sevier County Livestock Auction Co., Seymour, Tenn.

Union Livestock Yards, Inc., Knoxville, Tenn.

Notice is hereby given, therefore, that the said Chief, pursuant to authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), proposes to issue a rule designating the stockyards named above as posted stockyards subject to the provisions of the act, as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed rule may do so by filing them with the Chief, Packers and Stockyards Branch, Livestock Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., within 15 days after publication hereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 6th day of April 1960.

DONALD L. BOWMAN,
Chief, Packers and Stockyards Branch, Livestock Division, Agricultural Marketing Service.

[F.R. Doc. 60-3295; Filed, Apr. 11, 1960; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 34]

JOHN W. GOFMAN

Notice of Application

Notice is hereby given that Dr. John W. Gofman, 1045 Clayton Street, San Francisco 17, California, has filed an application before the Patent Compensation Board, United States Atomic Energy Commission, for compensation or award for "invention concerning uranium 233, its preparation, separation and evaluation of fissionability."

The application of Dr. John W. Gofman is on file with the Patent Compensation Board. Any person other than the applicant desiring to be heard with reference to the application should file with the Patent Compensation Board, United States Atomic Energy Commission, Germantown, Maryland, within thirty days from the date of publication of this notice, a statement of facts concerning the nature of his interest.

MARGARET H. MELIN,
Acting Clerk,
Patent Compensation Board.

APRIL 5, 1960.

[F.R. Doc. 60-3279; Filed, Apr. 11, 1960; 8:45 a.m.]

[Docket No. 50-151]

UNIVERSITY OF ILLINOIS

Notice of Issuance of Construction Permit

Please take notice that no request for a formal hearing having been filed following the filing of notice of proposed action with the Office of the Federal Register on March 18, 1960, the Atomic Energy Commission has issued Construction Permit No. CPRR-51 authorizing University of Illinois to construct a 10-kilowatt training and research reactor facility on the University's campus in Urbana, Illinois. Notice of the proposed action was published in the FEDERAL REGISTER on March 19, 1960, 25 F.R. 2369.

Dated at Germantown, Md., this 5th day of April 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Acting Director, Division of Licensing and Regulation.

[F.R. Doc. 60-3280; Filed, Apr. 11, 1960; 8:45 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

ANNI BRIEGER

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provisions for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Anni Brieger, Lima-Miraflores, Peru; $3,920.00 in the Treasury of the United States. Vesting Order No. 11673: Claim No. 41562.

Executed at Washington, D.C., on April 5, 1960.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 60-3302; Filed, Apr. 11, 1960; 8:48 a.m.]

K. E. LEONI AND SAMSON ONDERWIJZER

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

K. E. Leoni, Administrator of the Estate of Samson Onderwijzer, Deceased, Amsterdam, The Netherlands; $133.97 in the Treasury of the United States.
Vesting Order No. 17836; Claim No. 61995.

Executed at Washington, D.C., on April 5, 1960.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 60-3301; Filed, Apr. 11, 1960; 8:48 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30-XI-10]

BRANCH MANAGER, SALT LAKE CITY BRANCH OFFICE

Delegation Relating to Financial Assistance, Procurement and Technical Assistance, and Administrative Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation No. 30 (Revision 6) (25 F.R. 1706) there is hereby redelegated to the Branch Manager, Salt Lake City Branch Office, Small Business Administration, the authority:

A. *Financial assistance.* 1. To approve but not decline the following types of loans:

a. Direct business loans in an amount not exceeding $12,000.

b. Participation loans in an amount not exceeding $20,000.

2. To approve or decline Limited Loan Participation loans.

3. To approve or decline disaster loans not in excess of $20,000. Declination of disaster loan is extended only to an original application and not to reconsideration of such application.

4. To execute loan authorizations for Washington approved loans and for loans approved under delegated authority, said execution to read as follows:

(Name), *Administrator.*
By_____
(Name)
Manager,
Salt Lake City, Utah, Branch Office.

5. To modify or amend Washington approved authorizations for business or disaster loans by the issuance of Certificates of Modification and to modify or amend authorizations for loans approved under delegated authority, in any manner consistent with the original authority to approve loans provided, however, after disbursement, such authority shall not be exercised in excess of the authority granted in Paragraph 6 immediately following.

6. With respect only to direct business loans of $20,000 or less and to participation loans and disaster loans of $50,000 or less, to:

a. Extend to the maturity of a loan or to a date prior to the maturity, three monthly principal payments in any calendar year, and to execute the allonge.

b. Waive amounts due under net earnings clause.

c. Approve requests to exceed fixed assets limitations.

d. Approve payment of cash or stock dividends, payment of bonuses, increases in salaries, employment of new personnel, provided the Branch Manager considers the bonuses and/or salary to be paid reasonable and that consent will not be given to any such payment if the payment will impair the borrower's cash position and if the loan is not current in all respects at the time the payment is made.

e. Approve or reject substitutions of accounts receivable and inventories.

f. Release dividends on life insurance policies held as collateral for loans, approve the application of same against premiums due; release or consent to the release of insurance funds covering loss or damage to property securing the loan and expired hazard insurance policies.

g. Release liens, and consent to the release of liens, in connection with the sale of real or personal property and the exchange of equipment held as collateral on loans if funds from sales are applied on indebtedness in inverse order of maturity.

h. Endorse insurance checks of $1,000 or less, without recourse, and return them to bank or borrower.

i. Review and sign reports of field trips and act upon recommendations which are within Branch Manager's authority.

B. *Procurement and technical assistance.* 1. To develop with government procurement and sales agencies, required local procedures for implementing established interagency policy agreements, including but not limited to steps

such as determining joint set-asides and representation at procurement and property disposal centers.

C. *Administration.* 1. To administer oaths of office.

2. To approve (a) annual and sick leave, and (b) leave without pay not to exceed 30 days for employees under his supervision.

3. To (a) make emergency purchases chargeable to the administrative expense fund, not in excess of $15 in any one object class in any one instance but not more than $25 in any one month for total purchases in all object classes, (b) to contract for the repair and maintenance of equipment and furnishings in an amount not to exceed $15 in any one instance.

4. To obtain motor vehicle services from the General Services Administration and to rent garage space for the storage of such vehicles, within the limitations of funds as budgeted by the Regional Office for use of the Branch Office for this purpose.

5. In connection with the establishment of Disaster Loan Offices, to (a) obligate SBA to reimburse General Services Administration for the rental of office space, (b) rent office equipment, and (c) procure (without dollar limitation) emergency supplies and materials.

D. *Correspondence.* To sign all nonpolicy making correspondence, including Congressional correspondence, relating to the functions of the Branch Office.

II. The specific authorities delegated in I. A., and the authority to sign Congressional correspondence may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Branch Manager.

IV. All previous authority delegated to the Branch Manager is hereby rescinded without prejudice to actions taken under all such Delegations of Authority prior to the date hereof.

Dated: March 9, 1960.

HAROLD R. SMETHILLS,
Regional Director.

[F.R. Doc. 60-3253; Filed, Apr. 8, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 295]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 7, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62810. By order of April 5, 1960, the Transfer Board approved the transfer to Margaret T. Openhym, doing business as Wallington Motor Lines, Wallington, N.J., of Certificate in No. MC 93711, issued May 2, 1951, to Theodore Openhym and George C. Openhym, Jr., a partnership, doing business as O & O Transportation Co., Passaic, N.J., authorizing the transportation of: Foodstuffs and paper, over irregular routes, between points in New Jersey, on the one hand, and, on the other, New York, N.Y. John M. Zachara, P.O. Box 2860, Paterson 28, N.J., for applicants.

No. MC-FC 63043. By order of April 5, 1960, the Transfer Board approved the transfer to Mississippi-East, Inc., Washington, Pa., of Certificate No. MC 107726, issued August 28, 1947, to I. Newton Chadwick, Washington, Pa., authorizing the transportation of: Machinery, equipment, materials, and supplies used in, or connection with the discovery, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, and petroleum and their products and byproducts, coal stripping machinery and construction machinery, over irregular routes, between points in Pennsylvania, on the one hand, and, on the other, points in West Virginia, and Ohio; and glassmaking machinery, over irregular routes, between Washington, Pa., and points in West Virginia and Ohio. G. H. Dilla, 3350 Superior Avenue, Cleveland 14, Ohio, for applicants.

No. MC-FC 63049. By order of April 5, 1960, the Transfer Board approved the transfer to Kenneth G. Merscheim, doing business as Merscheim Transfer, Potter, Nebr., of Certificates Nos. MC 44806 and MC 44806 Sub 1, both issued August 7, 1950 to Ralph E. Merscheim and Kenneth G. Merscheim, a partnership, doing business as Merscheim and Son, Potter, Nebr., authorizing the transportation of: Household goods, as defined by the Commission, emigrant movables, and general commodities, with exceptions, between points in Nebraska, on the one hand, and, on the other, points in Colorado; and oils and greases, in containers, lumber, coal, iron and steel articles, seeds, farm machinery, salt, grain, and livestock, over irregular routes, from Laramie and Cheyenne, Wyo., and Colorado Springs, and Pueblo, Colo., and points in Kansas, to points in Nebraska; and emigrant movables, over irregular routes, between points in Nebraska, on the one hand, and, on the other, points in Wyoming and Kansas. Martin, Davis, Mattoon & Matzke, Attorneys at Law, 916—10th Avenue, Sidney, Nebr., for applicants.

No. MC-FC 63093. By order of April 1, 1960, the Transfer Board approved the transfer to Overbrook Freight, Inc., Paterson, New Jersey, of a Certificate in No. MC 2644, issued April 4, 1952, to Joseph Ferraro, doing business as Joseph Ferraro Trucking Co., Paterson, New Jersey, authorizing the transportation of general commodities, except household goods, as defined by the Commission, commodities in bulk, and other specific commodities, between New York, N.Y., on the one hand, and, on the other, specified points in New Jersey. John M. Zachara, P.O. Box 2860, Paterson 28, N.J., for applicants.

No. MC-FC 63096. By order of April 5, 1960, the Transfer Board approved the transfer to Helphrey Motor Freight, Inc., Spokane, Wash., of Certificates Nos. MC 107353 and subs 3A, 5, 8, and 13, issued November 12, 1946, May 25, 1950, June 13, 1952, January 9, 1959, and February 4, 1960, in the name of Harold Morse and Henry J. Holien, a partnership, doing business as Helphrey Motor Freight, Spokane, Wash., authorizing the transportation of general commodities, including household goods and commodities in bulk, over regular routes between Spokane, Wash., and Fortine, Mont.; between Edicott, Wash., and Kahlotus, Wash., between junction unnumbered highway and Washington Highway 11B, west of Dusty, Wash., and Dusty, Wash.; general commodities, excluding household goods, commodities in bulk, and various specified commodities, between Coeur d'Alene, Idaho, and Sandpoint, Idaho; between Spokane, Wash., and Garwood, Idaho; between Spokane, Wash., and La Crosse, Wash.; between Ritzville, Wash., and Spokane, Wash.; between Sprague, Wash., and Lamont, Wash.; between Spokane, Wash., and Great Falls, Mont.; between junction U.S. Highway 2 and unnumbered highway at a point northeast of Troy, Mont., known as Yaak Junction, Mont., on the one hand, and, on the other, the site of the U.S. Air Force Base, at or near Yaak, Mont., and service to and from points within 15 miles of Kalispell, Mont., and Spokane, Wash.; substitution in MC 107353 Sub 11; in MC 107353 Sub 10TA and Sub 12TA extended indefinitely authorizing transportation of general commodities, excluding household goods, commodities in bulk, and various specified commodities, between Spokane, Wash., and Havre, Mont.; and the same commodities and exceptions from Glasgow, Mont., to Glasgow Air Force Base, 22 miles northwest of Glasgow. Joseph L. Thomas, 711 Old National Bank Building, Spokane, Wash., for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-3299; Filed, Apr. 11, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—APRIL

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during April.